



**The Voice of the Bail Industry:
Media Coverage
of the American Bail Coalition**

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 140. Good4Utah.com (Salt Lake City) 4/26/18
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 178. Reason.com (8/24/18)
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180. Vacaville Reporter/Vallejo Times Herald (9/1/18)
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 182. NPR National (8/28/18)
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 185. Santa Maria Sun (9/5/18)
 186. iHeartRadio (8/30/18)
 187. The Crime Report (8/29/18)
 188. PBS News Hour (8/28/18)
 189. Palm Springs Desert Sun (8/29/18)
 190. San Mateo Daily Journal (9/7/18)
 191. The Crime Report (9/10/18)
 192. Los Angeles Times (9/9/18)
 193. KNBC-TV Los Angeles (8/30/18)
 194. Bakersfield Californian (9/2/18)
 195. San Francisco Chronicle (9/11/18)
 196. Sacramento Bee (9/13/18)
 197. Marin Independent Journal (9/16/18)
 198. Calaveras Enterprise (9/20/18)
 199. Crisfield/Somerset County Times (9/19/18)
 200. The Atlantic (9/21/18)
 201. Stockton Record (9/3/18)
 202. Washington Post (10/29/18)
 203. Legal Newslane (10/29/18)
 204. Capital News Service (11/2/18)
 205. KCBA Bar Bulletin (King County WA) - Nov 2018
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 207. KQED-FM Forum (NPR San Francisco) 11/20/18
 208. San Francisco Chronicle (11/20/18)
 209. Jersey Journal (11/21/18)
 210. Politico (11/21/18)
 211. Sacramento Bee (11/26/18)
 212. Law360 (11/25/18)
 213. Reason.com (Aug/Sept 2018)
 214. Calaveras Enterprise (12/5/18)
 215. UCLA Criminal Justice Law Review (Vol2. Issue1) 2018
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 221. New York Times Upfront (Oct 2018)
 222. San Jose Mercury News (1/17/19)
 223. Santa Fe New Mexican (1/21/19)
 224. Denver Post (1/22/19)
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230. Appeal-Democrat (Yuba & Sutter Counties CA) 1/20/19
231. KHTS-AM & FM Online (Santa Clarita CA) 1/21/19
232. Los Angeles Times (1/16/19)
233. KRON-TV Online (1/17/19)
234. Reason.com (1/17/19)
235. Associated Press (1/16/19)
236. Santa Cruz Sentinel (1/18/19)
237. Wisconsin Public Radio (1/21/19)
238. Bakersfield Californian (1/23/19)
239. The Appeal (1/9/19)
240. Los Angeles Times (1/29/19)
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242. Idaho Press/Tribune (2/6/19)
243. Public News Service (2/14/19)
244. Houston Chronicle (2/14/19)
245. Courthouse News Service (2/15/19)
246. Guidry News (2/15/19)
247. Houston Public Media (2/15/19)
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251. Temple Daily Telegram (2/18/19)
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257. WAMC Public Radio (Albany NY) 2/28/19
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259. MuckRock (3/5/19)
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261. Jurist.org (3/14/19)
262. Witness LA (3/20/19)
263. Law360 (3/31/19)
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265. WTGS-TV Online (4/1/19)
266. Reason.com (4/2/19)
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268. Jurist.org (4/2/19)
269. Law.com (4/2/19)
270. California Political Review (4/1/19)
271. NJ Spotlight (New Jersey) 4/3/19

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272. California Globe (4/3/19)
 273. Visalia Times/Delta (4/3/19)
 274. BlackPressUSA (4/3/19)
 275. Columbia University (4/5/19)
 276. Law360 Vogt (4/7/19)
 277. Law360 Penton (4/7/19)
 278. Chico Enterprise/Record (4/8/19)
 279. KFRG-FM (4/30/19)
 280. Associated Press (5/11/19)
 281. WVXU-FM (NPR Cincinnati) 5/15/19
 282. Scripps College (May 2019)
 283. Law360 (6/3/19)
 284. CBS Sunday Morning (6/2/19)
 285. The YES Group (6/26/19)
 286. Albuquerque Journal (7/3/19)
 287. Jefferson City News Tribune (7/15/19)
 288. California Political Review (7/16/19)
 289. Bill's News Commentary (7/29/19)
 290. California Political Review (8/2/19)
 291. Missouri Lawyers Weekly (8/5/19)
 292. Courthouse News Service (8/9/19)
 293. KQED-FM (NPR San Francisco) 8/23/19
 294. CNN (8/30/19)
 295. KFRG-FM (9/3/19)
 296. MissouriNet (9/10/19)
 297. WFYI Online (9/18/19)
 298. Daily Journal (9/23/19)
 299. Los Angeles Times (10/4/19)
 300. Law360 (10/6/19)
 301. KMBC-TV (ABC Kansas City) 10/11/19
 302. First State Update (Delaware) 10/14/19
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 304. WMDT-TV (ABC Salisbury MD) 10/15/19
 305. WDEL-FM (Wilmington DE) 10/15/19
 306. Delaware Public Media (10/15/19)
 307. Delaware State News (10/15/19)
 308. WHYY-FM Online (10/16/19)
 309. Delaware Business Now (10/16/19)
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 312. ProPublica 10/16/19
 313. Columbus Dispatch (11/4/19)
 314. OZY (11/5/19)
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 319. San Jose Mercury News (1/19/20)
 320. Wall Street Journal (1/26/20)
 321. The Crime Report (1/27/20)
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 324. KRCG-TV (CBS Jefferson City MO) 1/27/20
 325. Missouri Times (1/22/20)
 326. KRMS-AM (Osage Beach MO) 1/24/20
 327. KOLR-TV (CBS Springfield MO) 1/27/20
 328. MissouriNet (1/27/20)
 329. WENY-TV (Elmire NY) 1/27/20
 330. KYTV-TV (NBC Springfield MO) 1/28/20
 331. St. Joseph News-Press (1/30/20)
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 333. Daily Journal Online (Park Hills MO) 2/4/20
 334. WNBC-TV (New York) 2/5/20
 335. KTVO-TV (ABC Kirksville MO) 2/5/20
 336. California Globe (2/10/20)
 337. The Appeal (2/12/20)
 338. LAist (2/12/20)
 339. KRMS-AM & FM (2/12/20)
 340. California Political Review (2/13/20)
 341. The Appeal (2/13/20)
 342. BRKLYN (2/17/20)
 343. KRMS-AM & FM (2/18/20)
 344. KFTK-FM MO (2/18/20)
 345. WNYC.org (2/19/20)
 346. Columbia Missourian (2/18/20)
 347. KRCG-TV (CBS Jefferson City MO) 2/18/20
 348. KTVO-TV (ABC Kirksville MO) 2/18/20
 349. Northwest MoInfo (Bethany MO) 2/19/20
 350. The Crime Report (2/18/20)
 351. KYTV-TV (NBC Springfield MO) 2/19/20
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 356. Wall Street Journal (2/21/20)
 357. St. Joseph News/Press (2/21/20)
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 363. FoxNews.com (3/23/20)

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364. RouteFifty (4/10/20)
 365. Daily Journal (4/13/20)
 366. Crime 99 (RouteFifty) 4/16/20
 367. The Crime Report (RouteFifty) 4/16/20
 368. KIRO-FM (Seattle WA) 4/22/20
 369. OMNY.FM Seattle Morning News (4/22/20)
 370. CNBC.com (5/9/20)
 371. California Globe (5/12/20)
 372. Daily Democrat (5/21/20)
 373. Elk Grove Citizen (5/27/20)
 374. WPMT-TV (Fox Harrisburg PA) 6/3/20
 375. Washington Times (6/10/20)
 376. Law360 (6/21/20)
 377. St. Joseph News/Press (6/19/20)
 378. Daily Journal (6/12/20)
 379. Mountain Democrat (6/19/20)
 380. KQED-FM (NPR San Francisco) 7/2/20
 381. The Economist (7/9/20)
 382. KSL-AM & FM (Salt Lake City) 8/5/20
 383. KSL Online (Salt Lake City) 8/11/20
 384. Daily Journal (8/4/20)
 385. Attorney at Law (8/13/20)
 386. KOAA-TV (Colorado Springs CO) 8/28/20
 387. Law360 (8/30/20)
 388. Washington Examiner (9/1/20)
 389. American Greatness (9/1/20)
 390. Political Cowboy (9/1/20)
 391. The Washington Post (9/3/20)
 392. Law Week Colorado (9/4/20)
 393. Mediate.com (Sept 2020)
 394. The Washington Post (9/24/20)
 395. Daily Mail (9/17/20)
 396. San Francisco Chronicle (9/22/20)
 397. Wisconsin Law Journal (9/21/20)
 398. KQED-FM (NPR San Francisco) 10/2/20
 399. Detroit Legal News (10/9/20)
 400. Forbes (10/13/20)
 401. NBCNews.com (10/17/20)
 402. KTVX-TV (ABC Salt Lake City) 10/19/20
 403. KFI Podcast/Propositioned (Prop 25) 10/20/20
 404. Ventura County Star (10/21/20)
 405. Reuters (10/28/20)
 406. Associated Press (11/5/20)
 407. CALmatters.org (11/4/20)
 408. NPR National (11/4/20)
 409. Los Angeles Times (11/4/20)

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410. Orange County Breeze (11/5/20)
 411. California Political Review (11/5/20)
 412. Redding Record Searchlight (11/5/20)
 413. KBAK-TV (FOX Bakersfield CA) 11/5/20
 414. Sacramento Bee (11/6/20)
 415. San Luis Obispo Tribune (11/6/20)
 416. Los Angeles World Journal (11/7/20)
 417. San Jose Mercury News (11/12/20)
 418. Boulder Weekly (11/5/20)
 419. Daily Journal (11/13/20)
 420. CALmatters.org (11/20/20)
 421. WXIA-TV (NBC Atlanta) 12/16/20
 422. Newsbreak (WXIA-TV NBC Atlanta) 12/16/20
 423. Los Angeles Daily Journal (12/22/20)
 424. Bridge Michigan (1/18/21)
 425. KQED-FM San Francisco (1/27/21)
 426. Indianapolis Star (2/11/21)
 427. Los Angeles Lawyer (Feb 2021)
 428. Sacramento Bee (2/18/21)
 429. VocaVote (2/18/21)
 430. KMGH-TV (ABC Denver) 3/4/21
 431. MinnPost.com (3/25/21)
 432. Colorado Politics (3/17/21)
 433. Macomb County Legal News (3/19/21)
 434. Boulder Weekly (3/25/21)
 435. Reuters (3/26/21)
 436. Associated Press (3/26/21)
 437. San Jose Mercury News (3/25/21)
 438. California Globe (3/27/21)
 439. The Grio (3/26/21)
 440. Al Jazeera (3/29/21)
 441. Colorado Springs Independent (3/31/21)
 442. King County Bar Assn Bulletin (Apr 2021)
 443. Branson News (4/7/21)
 444. NewsTime (4/7/21)
 445. Business Briefs (Eagle County) 4/8/21
 446. St Joseph News Press (4/11/21)
 447. Law Week Colorado (4/19/21)
 448. CQ Roll Call (4/20/21)
 449. KMGH-TV (ABC Denver) 4/23/21
 450. Colorado Public Radio News (5/26/21)
 451. FOX TV Denver (5/27/21)
 452. California Political Review (7/8/21)
 453. CALmatters.org (7/13/21)
 454. Los Angeles Times (9/8/21)
 455. KFBK-AM (Sacramento) 9/7/21

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456. Newsmax (9/7/21)
 457. Washington Free Beacon (9/7/21)
 458. Associated Press (9/10/21)
 459. The Tennessean (9/14/21)
 460. The Center Square (9/17/21)
 461. Tennessee Lookout (9/15/21)
 462. Memphis Flyer (9/15/21)
 463. Indianapolis Business Journal (10/1/21)
 464. Houston Chronicle (10/14/21)
 465. KFMB-TV (CBS San Diego) 10/29/21
 466. WESA-FM (NPR Pittsburgh) 11/19/21
 467. Western Journal (11/29/21)
 468. KTVU-TV (San Francisco) 11/30/21
 469. Hamilton County Reporter (12/9/21)
 470. Capital News Service (12/10/21)
 471. WISH-TV (CW Indianapolis) 12/14/21
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 487. WTRC-FM Michigan (1/13/22)
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 491. Inside Sources (1/23/22)
 492. Law Enforcement Today (1/25/22)
 493. WISH-TV (CW Indianapolis) 1/25/22
 494. WXIN-TV (Fox Indianapolis) 2/7/22
 495. Indianapolis Star (2/9/22)
 496. Palm Springs Desert Sun (2/13/22)
 497. Palm Springs Desert Sun (2/19/22)
 498. WRTV-TV (ABC Indianapolis) 3/3/22
 499. WXIN-TV (Fox Indianapolis) 3/9/22
 500. KTRH-AM Houston (3/9/22)
 501. WRTV-TV (ABC Indianapolis) 3/9/22

The background of the entire page is a stylized American flag. It features a field of white stars on a blue background in the upper left corner, transitioning into red and white horizontal stripes that cover the rest of the page. The stars are of varying sizes and are arranged in a grid-like pattern.

502. Hamilton County Reporter (3/18/22)
503. WISH-TV (CW Indianapolis) 3/21/22
504. Houston Chronicle (3/22/22)
505. Indianapolis Star (3/24/22)
506. Palm Springs Desert Sun (3/28/22)
507. Lakeshore Public Media (3/31/22)
508. Palm Springs Desert Sun (4/20/22)
509. WRTV-TV (ABC Indianapolis) 5/4/22
510. WPTA-TV (ABC Fort Wayne) 5/5/22
511. Attorney at Law Magazine (5/20/22)
512. IndyStar.com (5/25/22)
513. Jurist.org (5/30/22)
514. Daily Journal (6/30/22)
515. Sinclair Broadcasting (7/27/22)
516. Connecticut Mirror (7/31/22)
517. Connecticut Mirror (8/7/22)
518. Connecticut Mirror (8/14/22)
519. Desert Review (Inland Empire CA) 8/25/22
520. Bloomberg Law (8/24/22)
521. KFI-AM (Los Angeles) 8/26/22
522. The Center Square (8/26/22)
523. Daily Journal (8/26/22)
524. Bloomberg News (8/30/22)
525. Virginia Lawyer (Dec 2022)
526. Straight Arrow News (1/5/23)
527. California Globe (1/6/23)
528. The Center Square (1/11/23)
529. The Center Square (2/27/23)
530. WBEZ-FM (NPR Chicago) 3/12/23
531. Block Club Chicago. 3/14/23
532. The Center Square (3/15/23)
533. CNN (3/21/23)
534. Lake County Gazette (Illinois) 3/28/23
535. Los Angeles Daily News (5/17/23)
536. LA Daily Journal (5/25/23)
537. Alabama Political Reporter (6/21/23)
538. The Center Square (8/1/23)
539. Vandalia Radio (8/2/23)
540. WRTV-TV (ABC Indianapolis) 8/10/23
541. WBND-TV (ABC South Bend IN) 8/14/23
542. Jeff Dornik Show (8/17/23)
543. California Political Review (8/18/23)
544. Indiana Lawyer Magazine 8/30/23
545. Daily Journal (9/8/23)
546. The Center Square 10/5/23
547. Stateline (11/13/23)

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548. Daily Journal (1/29/24)
549. The Tennessean (2/20/24)
550. WBIR.com (Knoxville TN) 2/21/24
551. Tennessee Lookout 2/21/24
552. State Affairs (Tennessee) 2/21/24
553. Law360 (4/5/24)
554. California Underground (4/12/24)
555. Colorado Politics (2/29/24)
556. WMDT-TV (ABC Salisbury MD) 6/11/24
557. Washington Post (9/11/24)
558. Washington Post (9/16/24)
559. Daily Montanan (10/4/24)
560. Calexico Chronicle (10/20/24)
561. Michigan Public Radio (11/11/24)
562. Detroit Metro Times 11/12/24
563. The Midwesterner 11/12/24
564. WILX-TV (11/12/24)
565. WILX-TV (NBC Lansing MI) 11/12/24
566. WWJ-AM (11/12/24)
567. WGHN Radio (Grand Haven MI) 11/13/24
568. WSMH-TV (FOX Flint MI) 11/13/24
569. WWMT-TV (CBS Kalamazoo MI) 11/13/24
570. Hometown Register 11/14/24
571. Bridge Michigan 11/15/24
572. Hawaii Free Press (12/16/24)
573. Colorado Springs Gazette (1/19/25)
574. Citizen Tribune 2/10/25
575. The Manchester Times 2/10/25
576. WHBQ-TV (FOX Memphis) 2/10/25
577. WBIR-TV (NBC Knoxville) 2/12/25
578. WTVF-TV (CBS Nashville) 2/12/25
579. Yahoo News (WKRN-TV - ABC Nashville) 2/12/25
580. Daily Memphian (2/13/25)
581. Tennessee Lookout (2/14/25)
582. Tennessee Star (2/24/25)
583. WSMV-TV (NBC Nashville) 2/25/25
584. Chattanooga Times Free Press (2/26/25)
585. Next Generation Newsroom (3/6/25)
586. Public Source (3/6/25)
587. WBIR-TV (NBC Knoxville) 3/17/25
588. WTVF-TV (CBS Nashville) 3/17/25
589. The Tennessean (3/18/25)
590. The Knoxville News-Sentinel (3/20/25)
591. KMGH-TV (ABC Denver) 5/3/25
592. NPR (7/21/25)
593. Associated Press (7/25/25)

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- 594. PolitiFact (8/11/25)
 - 595. Associated Press (8/12/25)
 - 596. WJLA-TV (ABC Washington DC) 8/26/25
 - 597. Stateline (9/23/25)
 - 598. CA Political News & Views (9/29/25)



Michigan Facing Budding Question: To Bond Or Not To Bond?

Should Michigan get rid of its cash bond system?

A West Michigan House member has started a legislative conversation that's being held in communities and states across the United States about the philosophical fairness of requiring cash bonds for the criminally accused.

An accused individual needs to stay in jail because they are a threat to the community or because they're a flight risk, said Rep. David **LAGRAND** (D-Grand Rapids).

But if neither is the case, there's no reason to force people, particularly of limited means, to pony up \$500 they don't have, he said. The impact of this practice is being felt in Michigan.

The poor are forced to stay in county lock-ups because they can't even afford a bail bondman. They lose their jobs. Single moms lose their children. It forces people to make deals to get them out of jail quicker, guilty or not. It puts these folks at a higher risk to reoffend, he said.

On the flip side, affluent people are being allowed to post even ridiculously high bonds when maybe they shouldn't be released, LaGrand said.

"We should not be confusing liberty and liquidity," he said. "And unfortunately what that means right now is something like half of the people in Michigan jails -- and there's about 18,000 people in our jails -- are in there because they can't afford a cash bond. It has nothing to do with their risk factors."

LaGrand is part of a bi-partisan, bi-cameral criminal justice caucus that is exploring this, among other issues. He's hoping to get the state Supreme Court, the Governor, the judges and other involved in this conversation.

Washington D.C. is among a slowly growing number of government entities that is moving away from cash bonds. The federal government either detains suspects or they don't. No cash required.

A good court services program can do a risk assessment. Tethering is also an option. A drunk driver can get started with a rehabilitation program quicker as opposed to "rotting in jail," he said.

"Our technology has gotten better. Maybe 100 years ago, I could have left and gone to Kansas City and nobody would have found me. But we live in a pretty findable society now, like it or not. We have GPS. My phone can tell my wife where I'm at," he said.

LaGrand is getting some Republican interest behind his idea. Rep. Pete **LUCIDO** (R-Shelby Twp.), who like LaGrand is an attorney by trade, said he believes judges should have the option to set a bond to pay the police costs of tracking down people they suspect "are going to scoot."

That said, Lucido said, "I truly believe we don't need bonds for most people."

In some courts, judges are setting bonds to cover the fines and penalties ultimately assessed in court. A family member or a friend posts bonds for a suspect. The money is put in a suspect's name. The suspect is fined the amount of the bond and the money is forfeited to the court.

"It's kind of like getting your money up front," he said, adding that this "abuse of the process" would stop if the cash bond system weren't used as much.

House Law and Justice Committee Chair Klint **KESTO** (R-Commerce Twp.) said he isn't comfortable with moving toward a complete no-cash bond system because "somebody has to have an interest in property."

For example, if a criminal used someone's vehicle in a crime or was caught with a substantial amount of money, without a cash bond system, the criminal "wouldn't have any skin in the game" and an "innocent party" could come and lay claim to the vehicle or the money.

Under a cash-bond system that money or vehicle is used as bond, which otherwise may be used to continue whatever criminal enterprise was stopped through the arrest.

The Prosecuting Attorneys Association of Michigan (PAAM) has no position on cash-less bonds, but the group is interested in being part of any discussion that looks at pre-trial conditions and making "sure public safety is at the forefront of any decision," said PAAM President Mark **REENE** of Tuscola County.

That said, even with a cash-bond system, there are various levels of review.

"There is something to be said about creating a system where someone shows up in court," he said.

Then there's Barb **HANKEY**, the manager for Oakland County Community corrections, who has worked in pre-trial services for 29 years.

She would agree that people shouldn't "buy their way out of jail if they are dangerous" and sees judges and magistrates having to "play the money game" to figure out what level of bond would be too high for them to reach so they will stay in jail.

Hankey would argue the current system of cash bonds doesn't always work. In number of cases, affluent people have posted bond, gotten out and committed another bad act. Meanwhile, folks on the low socio-economic scale who don't really present any dangers are stuck in jail because they can't come up with even a couple hundred dollars.

The research she's seen shows the best way to make sure suspects show up to court is to remind them of their court dates four days and the day before a hearing date.

Financial bail, she believes, should be "used very rarely."

"We need to make sure we're getting the right people in the jails," Hankey said. "It shouldn't be drive by wealthy, but it should be based by the amount of risk they pose to the community."

"It's a nationwide discussion," she said. "We're not the first to have this discussion and, hopefully, we're not the last."

But in the opinion of Jeff **KIRKPATRICK** of Hudsonville-based Universal Fire and Casualty the idea of a cashless bond type system is "solution in search of a problem," considering he sees the Michigan's system among the best in the country.

For one, a Michigan judge has discretion on whether to issue bond or not based on the full set of facts in front of him or her. For those who are poor, a judge can already set a lower bond or a personal recognizance (PR) bond if the suspect isn't viewed as a flight risk.

He said stories of county jails allegedly packed with poor people are seriously overblown and that there are typically good reasons why bonds are set at high levels for certain suspects.

"That's why we elect judges, to make decisions on a case-by-case basis," Kirkpatrick said. "The judge can set a PR bond and let them out the door. There is nobody languishing in jail. The system works really, really well."



DOJ: Holding poor defendants who can't afford bail unconstitutional

Posted: Feb 20, 2017 2:40 AM PST

Updated: Feb 20, 2017 2:40 AM PST

By Jonathan Andrews, Sr. Digital Content Producer



The 11th Circuit Court of Appeals in Atlanta. (via: UScourts.gov)

An appeals court in Atlanta will take on a case that could have huge implications for the entire criminal justice system.

The 11th Circuit Court of Appeals will hear the arguments in the case of *Maurice Walker vs. the City of Calhoun, Georgia* starting Thursday.

Walker, then 54, alleges that he was unlawfully denied the right to bail because he spent six days in jail in the city of Calhoun after he couldn't afford \$160 bail following his arrest on a charge he was walking while intoxicated.

According to Fortune.com, Walker says he lives on a fixed income of \$540 per month.

According to a brief filed by the Department of Justice in August 2016, the case hinges on the 14th Amendment of the US Constitution and seeks to answer the issue of whether bail unequally punishes those who cannot pay it:

Whether a bail practice that results in the incarceration of indigent individuals without meaningful consideration of their ability to pay and alternative methods of assuring their appearance at trial violates the Fourteenth Amendment.

The sweeping 14th Amendment guarantees equal protection under the law for all US citizens and prohibits states from depriving people of "life, liberty, or property, without due process of law."

A three-judge panel consisting of William Pryor, Adalberto Jordan and Bobby Valdock will decide on Walker's case.

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Bail Reform after a Month

Prosecutor Sees Greater Workload; At Jail, Inmate Population Level

Posted: Wednesday, February 22, 2017 2:41 pm

[Prosecutor Sees Greater Workload; At Jail, Inmate Population Level](#) By Bill Barlow

COURT HOUSE – Lauded by supporters, derided by critics, barely noticed by much of the public and narrowly upheld in a recent decision in Trenton, a state Constitutional amendment that dramatically changed bail in New Jersey has had little effect on the number of inmates in the county jail, at least so far.

Cape May County Prosecutor Robert L. Taylor said it made a big impact on his office.

“Bail reform has increased the workload of the prosecutor’s office significantly,” Taylor said Feb. 16.

The change, which had the support of Gov. Chris Christie and more than 60 percent of New Jersey voters as a ballot question in November, aimed to disconnect what happens to someone accused of a crime while awaiting trial from how much money they have.

Roseanne Scotti, senior director, [Drug Policy Alliance New Jersey](#), which pushed for the change, said three-quarters of the people in county jails under the old system were there awaiting trial, rather than serving time for a crime.

She said the average time was 10 months, describing that as a big cost to the taxpayers and unfair to the accused, who may lose their job, their homes or more in that time.

Ability to Make Bail

For the most part, she said, they were in county jails based only on their inability to pay bail. What’s more, she said, the right to post bail was established in the New Jersey Constitution, which meant someone accused of some heinous crime who had either a lot of money or rich connections would await trial at home. Another accused of a minor offense who could not post \$1,000 or \$500 in bail ended up behind bars, she said.

“Under the old system, if you had money and were accused of a crime, you could post bail and go home,” she said. “If you didn’t have money, no matter how minor the offense, you sat in jail for months or even years awaiting trial. Now, it’s based on risk.”

Motion to Detain

As of Jan. 1, if the prosecutor's office believes someone accused of a felony or of domestic violence is a danger to others or is a flight risk, they have to be prepared to prove it. The office has 48 hours to make a motion to detain someone accused of a crime, Taylor said.

That means reviewing every warrant, domestic violence incident or an indictable offense. His office then has three days to put together a presentation for a detention hearing, which must be made available to the defense attorney.

This means a much slower process, Taylor said. Those hearings typically take about a half hour, compared to about 10 minutes for bail hearings under the old system, he added.

Challenge Fails

The New Jersey Association of Counties (NJAC) legally challenged bail reform, arguing that it failed to meet another element of the New Jersey Constitution: State mandate, state pay.

Basically, that means if the state wants local governments to take on a new expense, Trenton has to be ready to pay for it. But Feb. 15, the Council on Local Mandates, charged with enforcing that provision, upheld the change in a 4-3 vote.

John Donnadio, the executive director NJAC, did not respond to a request for an interview. [But he told reporter S.P. Sullivan with NJ.com](#) that the change will cost counties at least \$50 million a year, which is going to end up funded by taxpayers.

Too Early

County Sheriff Gary Schaffer, whose office is in charge of the county correctional center, was not prepared to offer an opinion on bail reform for this story.

"It's really too early. It's been about a month," he said. But he did talk facts.

So far, he's seen no reduction in the jail population compared to this time last year. Overtime is up, as is the amount of court time for his officers, he said, although he added there are five officers in the county Police Academy. Once they graduate, he may be able to reduce overtime.

The issue has not received much notice statewide, but did surface in several Cape May County political campaigns, repeatedly cited in connection to county plans to spend \$37 million to replace the existing county jail, in part because of overcrowding.

The new jail is expected to be completed next year, and bring the capacity from 188 inmates to 320, according to several reports, in addition to modernizing the facility. If bail reform works the way it's supposed to, the jail should see fewer prisoners. That hasn't happened yet.

"I hope so, but for now, I don't see that," said Taylor.

Instead, he reiterated, it's created a significant increase in the work of his office with little or no change to the population in the county jail.

Voices of Support

Voices supporting bail reform include the American Civil Liberties Union New Jersey unit, Republican Gov. Chris Christie and Chief Justice Stuart Rabner, of the New Jersey Supreme Court.

[Rabner wrote an op-ed piece for the Star-Ledger](#) praising bail reform as the most significant transformation of New Jersey's criminal justice system in decades.

“We shifted from a system that relied heavily on monetary bail to one that objectively measures the risk defendants pose on two levels: Will they show up for trial? Will they commit a crime while on release? Under the new risk-based system, those who present a substantial risk of danger or flight can be detained pending trial.

Those who don't will be released on conditions that pretrial services officers will monitor,” wrote Rabner.

But not everyone is happy with the change, and not only because it makes things harder for law enforcement. A recent email from the American Bail Coalition raised questions of safety in the implementation of bail reform, citing several examples of people released on recognizance after serious crimes.

Opposition No Surprise

Scotti said it's no surprise that a coalition of bail bond companies would oppose reform.

“These are people who are financially invested in the old system. They want to leave the old, broken system in place,” she said.

Bail Coalition Fighting

But according to Jeff Clayton, the policy director for the American Bail Coalition, bail companies in New Jersey realize they will never get their old careers back. “They're still fighting because they think it's fundamentally wrong,” he said.

Clayton attended the hearing before the Council on Local Mandates. “Obviously, we have opposed the amendment and the implementation,” he said in an interview the next day.

He took issue with the way the changes were implemented across the state, and said even in a reformed system; there is still a place for bail.

“Monetary bail should be on a level playing field,” he said. “We didn't think monetary bail was going to be eliminated, but that's basically what has happened.”

A judge can impose a money bail, he said, but that is extremely limited. More legal action is expected on the matter.

He hopes that there will be a return of some financial conditions of bail, either cash or surety bail. “Right now, the only way a prosecutor can keep people in jail is to prove preventative detention,” he said.

New Way's Working

Scotti said the new method is fairer and improves public safety.

“We think it is going wonderfully. The rollout was very smooth. There were a few glitches. It seems to have achieved the goal of de-prioritizing money bail,” she said.

Scotti said reform opponents have highlighted few instances of problems, but said in the first month 3,000 people went through the system.

In one case that was brought up, she said, a homeless man who was released committed a burglary, which she said was an attempt to get back to a warm jail with regular meals.

“This isn't a problem with bail reform. This is a problem with the lack of social services. His goal was shelter and food. That is not the job of the jail. He should be in a shelter,” she said.

Police Departments Work to Adjust

Throughout the county, police departments are working to adjust to what Middle Township Chief Christopher Leusner described as the biggest change in New Jersey's criminal justice system since 1947.

"I think the motivation behind bail reform made a lot of sense," he said, citing the example of someone stuck in jail for a minor offense because they can't raise \$500. But the implementation has been a challenge for his department and others, as officers spend far more time processing suspects through the system. He said in one case, the department had to feed someone, which they're not set up to do. They ended up ordering from McDonald's. As the president of the Cape May County Chiefs of Police Association, he said all the departments in the county face the same challenge, saying in one case, Wildwood officers spent 14 hours with a single suspect.

And while he generally supports reforming cash bail, he does not say it's going perfectly. He cited incidents in which suspects were released who seemed like good candidates for custody, describing one instance of someone released on his own recognizance after being accused of trying to lure a 12 year old.

"I think it may have to be revisited in the future," Leusner said.

To contact Bill Barlow, email bbarlow@cmcherald.com.



Don't lock up people too poor to make bail, Atlanta court is urged

'Dog the Bounty Hunter' makes a surprise appearance

[ATLANTA-NEWS](#)

By [Bill Rankin](#) - The Atlanta Journal-Constitution



Duane "Dog" Chapman, in late 2007 photo, was an unexpected spectator at Thursday's hearing in Atlanta.
(AP photo / Dog Corp.)

Posted: 5:27 p.m. Thursday, February 23, 2017

Three federal appeals court judges on Thursday grappled with the potentially far-reaching issue of whether people arrested for minor offenses should remain jailed if they are too poor to post bail.

At issue is [the city of Calhoun's use of a schedule that sets bail based solely on the crime being charged](#) — without considering an offender's ability to pay the bond.

During the arguments, the judges appeared to agree that failing to consider an offender's indigency is, as Judge Adalberto Jordan said, "problematic." But they often expressed frustration when asking lawyers what practices are constitutional — such as how long may defendants be detained before a determination is made that they cannot afford bail?

The lawsuit was brought by Maurice Walker after he was arrested in the northwest Georgia city in September 2015 for being a pedestrian under the influence of alcohol. Walker, who relies on a \$530 monthly disability check, was detained for six days because he could not afford to post a \$160 bond, according to court filings.

In January 2016, U.S. District Judge Harold Murphy in Rome declared the city of Calhoun's practice unconstitutional. He also ordered the city to comply with the Constitution and stop keeping people in custody "for any amount of time solely because (they) cannot afford a secured monetary bond."

Since that order, Calhoun's municipal court has allowed people charged with misdemeanors to be released on their own recognizance, Calhoun's attorney, Sam Lucas, said Thursday. The city also asked the 11th U.S. Circuit Court of Appeals in Atlanta to dissolve Murphy's preliminary injunction.

Walker, represented by Civil Rights Corps and the Southern Center for Human Rights, is asking the appeals court to uphold Murphy's order.

Lawsuits similar to Walker's that challenge city and county bail practices are pending in other courts across the country, but his case has attracted national attention because it is now one step below the U.S. Supreme Court.

The high stakes are evidenced by legal briefs filed by numerous cities, municipal associations, bail bonds groups and national legal organizations on the issue before the Atlanta appeals court.

The brief filed by the U.S. Justice Department's civil rights division noted that impoverished people are already in vulnerable situations, and that pretrial custody means the loss of jobs, disrupted families and idleness.

The Georgia Sheriffs Association, the American Bail Coalition and the Georgia Association of Professional Bondsmen enlisted former U.S. Solicitor General Paul Clement to file a motion on their behalf in support of Calhoun's practices.

The plaintiff in this case effectively wants to abolish monetary bail on the theory that defendants are entitled to immediate release based on an assertion of indigency, Clement wrote. "Nothing in the Constitution supports that extreme position."

In an unusual twist, Duane and Beth Chapman, who starred in the reality TV shows ["Dog the Bounty Hunter"](#) and "Dog and Beth: On the Hunt," attended the arguments to support the city of Calhoun.

"I'm here to help make America safe," Duane "Dog" Chapman, his dark sunglasses propped atop his trademark long blonde hair, said outside the courtroom.

Beth, president of the Professional Bail Agents of the United States, said, "You can't allow everybody in jail to be let out for free. There'd be no repercussions, no deterrence, nobody would be out looking for them."

Inside the courtroom, Judge Bill Pryor called many of the city's arguments "unpersuasive."

But Pryor and his colleagues also said they could not understand why Calhoun's municipal court was now releasing all defendants on their own recognizance without providing a hearing to determine whether they were flight risks or a danger.

Walker's lawyer, Alec Karakatsanis, told the judges they should forbid any bail system that jails only the poor and allows those who can afford to pay go free. "No period of wealth-based detention is constitutional," he said.

The court is expected to issue its opinion in the coming months.

Judges will make decision that could shake up bail system

Posted: Feb 23, 2017 4:43 PM PST
Updated: Feb 23, 2017 4:44 PM PST

By Brittany Miller



(Source: WGCL)

CALHOUN, GA (CBS46) -

Three appellate judges will make a decision that could shake up the American bail system.

“The court for the first time is addressing the idea of whether we can hold on to somebody, keep them in jail simply because they can’t pay the bail, whether [it’s] constitutional,” said attorney Page Pate.

In 2015, Maurice Walker was arrested for allegedly being a pedestrian under the influence. He was then given two options -- pay a \$160 cash bond or stay in jail.

Unable to find the funds, walker stayed in jail for several days.

He then sued the city of Calhoun.

A judge later granted this injunction saying, “Defendant [city of Calhoun] may not continue to keep arrestees in its custody for any amount of time solely because the arrestees cannot afford a secured monetary bond.”

Now, Calhoun is fighting back.

So is Beth Chapman, the wife of famous bounty hunter Duane "Dog" Chapman.

“Requiring that a person is just immediately released from jail as soon as they’re arrested is not reasonable and it’s dangerous to the community,” said Chapman.

Pate called the practice unconstitutional.

“Treating poor people, indigent people different than anybody else without at least a consideration for ability to pay, and that’s not fair,” said Pate.

“They’re not being penalized because they’re poor. They have a choice to break the law, or not break the law,” said Chapman.

“People who have money get treated better than folks who don’t. That’s a debate that’s been going on for a long time. No matter how this case comes out I don’t think it’s going to be over yet,” said Pate.

Pate said the decision could take months. In the meantime, Calhoun has already taken action. The city attorney said under the new policy, people will appear before a judge within 48 hours of being taken into custody.

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Eleventh Circuit Questions Calhoun's Challenge of Injunction on Indigent Bail

[R. Robin McDonald](#), *Daily Report*

February 23, 2017



Judge William Pryor Jr. of the U.S. Court of Appeals for the Eleventh Circuit Photo: Diego M. Radzinski/ALM

Lawyers representing the city of Calhoun appeared Thursday before a panel of the U.S. Court of Appeals for the Eleventh Circuit [seeking to overturn](#) a preliminary injunction that bars the city from detaining indigent defendants in misdemeanor or minor traffic cases for as long as a week simply because they cannot afford a cash bond.

But Calhoun's counsel, Sam Lucas of Brinson Askew Berry, faced a barrage of questions from the panel—Circuit Judges William Pryor, Adalberto Jordan and Bobby Baldock, a Tenth Circuit senior judge—as well as pointed judicial commentary that included a liberal amount of criticism, both overt and implied.

Early on, Pryor suggested that Calhoun had made "a bunch of arguments that appear to be unpersuasive" in its efforts to fault U.S. District Judge Harold Murphy for finding that the city's [misdemeanor bond practices](#) were unconstitutional.

Jordan, at one point, attacked the city's interpretation of Murphy's order, which Lucas said had prompted the city to release all arrestees for city ordinance violations on their own recognizance, saying, "No one could have possibly interpreted it in that way ever."

Alec Karakatsanis, an attorney with the Washington-based Civil Rights Corps who [defended the injunction](#), said that any jurisdiction must justify distinctions it makes among arrestees in detaining them or allowing them to post bond. But, he said, that distinction cannot be based solely on the ability to immediately post a cash bond.

In 2015, Maurice Walker, the plaintiff in the class action complaint, was arrested for public intoxication as he wandered along a five-lane road in Calhoun. Walker—who was diagnosed with a mental health disorder that has left him on disability, unable to work, and an income of less than \$550 a month—did not have the funds to pay a \$160 cash bond. He remained in jail

for six days and was released only after attorneys with Atlanta's Southern Center for Human Rights stepped in and sued the city on Walker's behalf.

Calhoun's bail bond schedule and its policy of detaining those who couldn't pay up remained in place until nine days before Murphy issued the injunction. At that time, the city modified its practice to require that arrestees who couldn't post a cash bond be released after 48 hours.

Both Pryor and Jordan were clear that Calhoun's initial practice was "problematic," and Jordan secured that reluctant admission from Calhoun's counsel. But the two circuit judges also challenged lawyers for both the city and Walker as to just how long someone might be detained on a misdemeanor charge or ordinance violation before that detention became unconstitutional.

Murphy's preliminary injunction, and Calhoun's appeal, has attracted [national attention](#). The U.S. Justice Department filed its own brief on Walker's behalf and that of a potential class of similarly situated indigent defendants in misdemeanor, minor traffic and city ordinance violation cases.

On the other side, the Georgia Municipal Association and neighboring Alabama League of Municipalities and four Alabama cities weighed in with amicus briefs on behalf of Calhoun. So did the Georgia Sheriffs Association, the American Bail Coalition and the Georgia Association of Professional Bondsmen, which hired Washington lawyer Paul Clement to file an amicus brief defending Calhoun's bail policies.

On Thursday, cable reality TV bail bondsman Duane "Dog" Chapman and his wife, Beth—president of Professional Bail Agents of the United States—showed up at the Eleventh Circuit after advancing their attendance with an advisory to national and local media. In defending the need for bonds and what she said was the \$1.2 billion bond industry, Beth Chapman called for hearings as to whether jailed individuals were indigent rather than releasing them on their own recognizance. "People are not in jail because they're poor," she insisted. "They are trying to paint a picture that all poor people are languishing in jail, and it just isn't true."

Calhoun's bail bond schedule and its policy of detaining those who couldn't pay up remained in place until nine days before the district court judge issued the injunction. At that time, the city modified its practice to require that arrestees who couldn't post a cash bond be released after 48 hours.

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THE HUFFINGTON POST

[POLITICS](#)

02/23/2017 07:37 pm ET

Dog The Bounty Hunter And A Top Conservative Lawyer Are Trying To Save The Bail Industry

A federal appeals court heard arguments on Thursday in a case that could shape the future of bail in the U.S.

By Ryan J. Reilly



ILYA S. SAVENOK/GETTY IMAGES

Duane “Dog the Bounty Hunter” Chapman and his wife, Beth, visit the SiriusXM studios in New York City, April 24, 2015.

WASHINGTON — With TV’s Dog the Bounty Hunter looking on from the front row, a civil rights attorney representing an indigent Georgia man appeared before a federal appeals court Thursday in a case that could affect the future of the multibillion-dollar bail bond industry — and the constitutional rights of people who are legally presumed innocent but can’t afford to purchase their freedom.

The U.S. Court of Appeals for the 11th Circuit heard oral arguments in Atlanta on Thursday in the case of Maurice Walker v. City of Calhoun. Walker, a 54-year-old with a serious mental health disorder, lived with his sister and was receiving about \$530 in Social Security disability payments per month when he was arrested in Calhoun, Georgia, on Sept. 3, 2015, for walking while drunk.

Taken to Gordon County Jail, Walker was told he would not be released unless he came up with \$160 in cash — the amount that Calhoun’s bail schedule set for all people arrested as pedestrians under the influence, regardless of their financial circumstances.

Deprived of his medication and forced to spend 23 hours a day in his cell, Walker was not scheduled to appear before a judge until 11 days after his arrest. But D.C.-based

civil rights attorneys and lawyers with the Southern Center for Human Rights intervened, [filing](#) a lawsuit on Walker's behalf while he was still in custody. The suit described Calhoun's preset bail system as a "money-based post-arrest detention scheme" that discriminated against the poor.

Last year, a federal judge granted a preliminary injunction against Calhoun and ruled that "any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause."

The class action suit is about much more than just Walker and the city of Calhoun, which made changes to its bail practices following the litigation. Walker v. Calhoun is one of several cases across the nation challenging the practice of money bail, many of them filed by Alec Karakatsanis, now of the organization [Civil Rights Corps](#), who has been waging a [battle](#) against bail policies that have a disparate impact on the poor.

When pretrial defendants accused of minor offenses are locked up for even a short period of time, it can have severe consequences. They can lose their jobs, their housing and the connections that give their lives stability. Sometimes, they can lose their lives. As part of an [extensive investigation of jail deaths](#) across the United States, [The Huffington Post reported last year](#) on the death of Mark Goodrum, 60-year-old stroke victim who died in a [troubled jail](#) in Virginia (which is [now under federal investigation](#)).

Charged with smoking marijuana in his apartment, and after missing a court date while he was ill, Goodrum was held on \$1,000 bond, meaning he'd need about \$100 in cash to purchase a commercial bail bond. Instead, he died in the jail's custody a month after his arrest. Goodrum's death was tragic but not unique: [Dozens of people accused of similar low-level offenses](#) died behind bars over the course of the year.



We Wanted To Find Troubled Jails, So We Counted The Bodies

Ten jails. More than 40 deaths. What happened in one year?

 The Huffington Post [ryanjreilly / Dec 15, 2016](#)

Under the Obama administration, the Justice Department [filed an amicus brief](#) in the Walker case stating that when bail practices "do not account for indigence," they result in "the unnecessary incarceration of numerous individuals who are presumed innocent." Other amicus briefs in the Walker case calling fixed-money bail systems unconstitutional were filed by the Pretrial Justice Institute and the American Bar Association.

The case was heard on Thursday by Judge William Pryor, a George W. Bush appointee; Judge Adalberto Jordan, a Barack Obama appointee; and Judge Bobby L. Baldock, a Ronald Reagan appointee who is visiting from the 10th Circuit Court of Appeals. They'll decide whether the lower court erred by issuing a preliminary injunction that, until major changes were made, banned the town from holding anyone charged with a misdemeanor.

Former U.S. Solicitor General Paul Clement, a widely respected conservative attorney known for (unsuccessfully) arguing before the Supreme Court in 2013 that the [Defense](#)

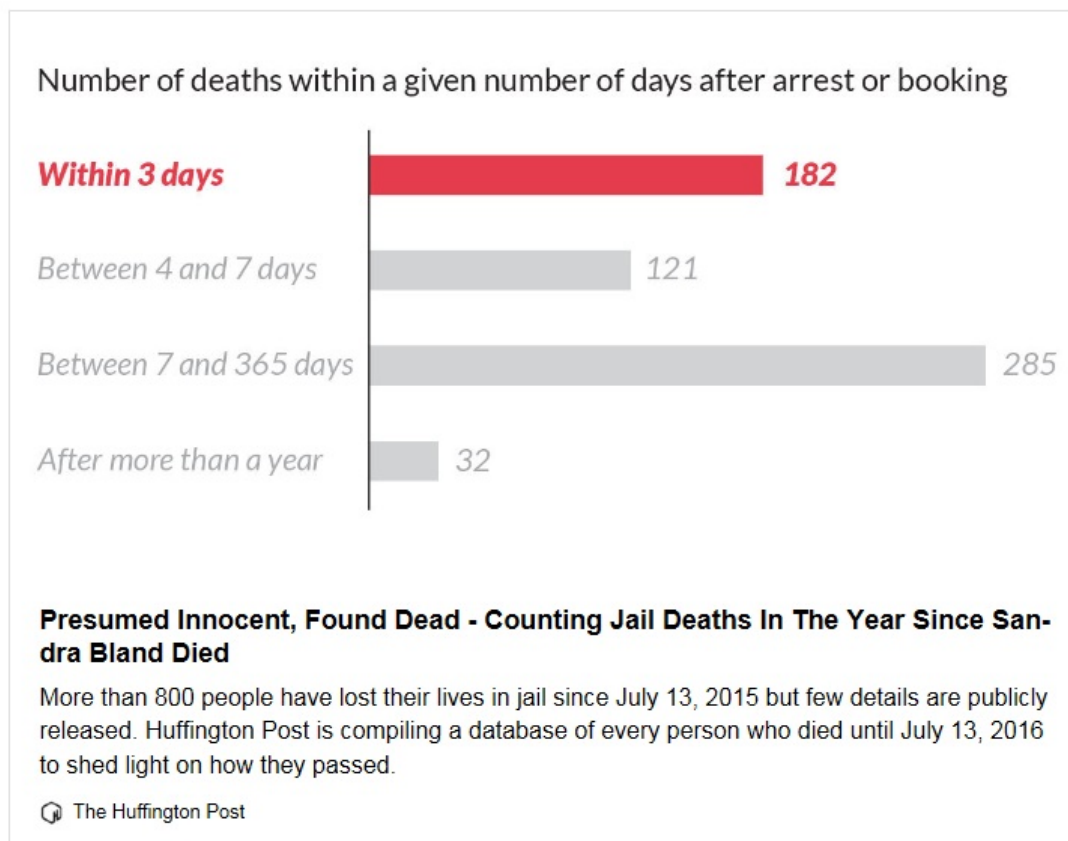
[of Marriage Act](#) was constitutional, represented the American Bail Coalition, a trade association for the bail bond industry. For-profit bail bondsmen in the U.S. handle \$14 billion in bonds each year, raking in \$2 billion in annual revenue, according to a [2012 report by the Justice Policy Institute](#). A handful of large insurance firms are responsible for underwriting the majority of these companies, and have mounted an [aggressive lobbying campaign](#) to protect the industry's bottom line.

Clement entered an amicus brief in the case, but did not appear before the court on Thursday. However, in a separate case in Maryland, Clement recently [argued](#) that the U.S. Constitution “does not include a right to affordable bail in every case,” and that pretrial deprivation “is not a punishment.” He also said the Constitution “doesn’t guarantee everyone the means of being able to post the bail,” only that it guarantees the option. (Maryland’s highest court ultimately [reached a compromise](#) this month that did not abolish money bail, but rather told judges to look for alternative ways to make sure defendants show up at future court appearances.)

The battle over bail certainly hasn’t broken down along straight party lines, and many conservatives support bail reform. In New Jersey, which recently [underwent a massive reform to its pretrial detention and bail system](#), Gov. Chris Christie (R) defended the new practices and [accused](#) the bail bond industry of posting “ridiculous” propaganda “crap” about the reforms failing.

“The bail bonds community has made a fortune over the years predominantly on the backs of poor people in New Jersey,” Christie [said in a radio interview](#). “We are now stopping them from doing it and they’re pissed. Too bad. You shouldn’t be making money off the poor that way.”

And the Cato Institute, a libertarian think tank, filed an amicus brief in the Walker case arguing that the court’s decision to issue a preliminary injunction against Calhoun was supported by “nearly a *millennium* of Anglo-American constitutional and common law.” The institute asserted that the right to pretrial liberty has been a procedural right since “time immemorial,” even before the Magna Carta was put in place more than 800 years ago.



In other parts of the world, paying a person’s bond in exchange for money is the [equivalent of obstruction of justice](#). Today, just one other country in the entire world — the Philippines — has a commercial bail bond industry similar to that which exists in the United States.

But Clement, in his brief on behalf of the bail industry in the Walker case, argued that bail is a “well-founded tradition” that has been around since the nation’s birth. His brief

called the lawsuit “a frontal attack” on the bail system, and argued that the commercial bail bond industry “allows individuals of all financial means to leverage their social networks and community ties to obtain pretrial release.”

As Clement defends the bail industry in court, two of the most famous people associated with the bail industry — Duane Chapman, aka [Dog the Bounty Hunter](#), and his wife, Beth — are aiding a public relations campaign to save the bail industry. Duane Chapman called the battle over the future of bail a “two-front war” involving both litigation and legislation. “This is an all-out assault by the criminal lobby to change a 200 year old practice of cash bail,” he said in a [statement](#) about attending oral arguments in the case.



Beth Chapman, who last year was elected president of the Professional Bail Agents of the United States, said the bail industry “provides a service to the government and helps ensure the public’s safety at no cost to the taxpayers.” In reality, though, jailing people is expensive, and U.S. taxpayers end up footing the bill. A [report published last month](#) found that pretrial incarceration costs \$14 billion a year, with much of that money going to process and house lower-risk defendants who are only locked up because they can’t afford bail.

Chapman said the lawyers challenging cash bail systems are “social justice lackeys” whose “only goal is to make it easier for the bad guys to get out of jail with no repercussion and no deterrent.”

As the bail industry and civil rights advocates await the federal appeals court decision, there’s another court battle shaping up in Texas next month. Harris County, which has [an understaffed jail where at least 12 inmates died](#) over the course of a single year, is facing a [lawsuit](#) from Civil Rights Corps alleging that its bail system is unconstitutional.

A lawyer for Harris County actually argued earlier this month that [some people were in jail because they wanted to be there](#). The federal judge didn’t buy it.

Ryan J. Reilly, Senior Justice Reporter, The Huffington Post

The Choctaw Sun-Advocate



The Choctaw Sun-Advocate
Wednesday • March 1, 2017

LOCAL NEWS 3A

ATLANTA • Federal court case could affect Alabama

MONEY and INCARCERATION

Does bail system discriminate against poor suspects?

By Dee Ann Campbell
Sun-Advocate Publisher

ATLANTA, BUTLER – A class action case that was heard last week in the U.S. District Court in Atlanta could have implications on those posting bail in other states, including Alabama, and potentially affecting suspects arrested in Choctaw County.

The case was brought to the court by a Calhoun, Georgia, jail inmate who alleged that he was discriminated against when he was arrested because he was unable to pay the \$160 cash bond required for his release. Maurice Walker, who was arrested in September, 2015, for public intoxication, claimed that the bail system in Calhoun was unconstitutional and discriminatory against those who could not afford to pay.

Walker was represented by attorneys from Equal Justice Under Law and the Southern Center for Human Rights. The attorneys claimed that the bail system in Calhoun was keeping poor arrestees in jail, while those with money to post bond were allowed to go free.

"In the City of Calhoun, many people arrested for minor traffic or misdemeanor offenses are released from custody almost immediately upon payment of money to the City," the suit reads. "Those arrestees who are too poor to purchase their release remain in jail because of their poverty for up to seven days before a first court appearance."

The plaintiff's attorneys asked the court to mandate a change in policy so that the 'constitutional rights of Mr. Walker and the class members will be protected in the future'. The complaint cited the 14th Amendment's Due Process and Equal Protection clauses as basis for their case.

Although the case directly affects the city of Calhoun, the case could have wide implications, potentially affecting states across the county, and some believe the issue could end up before the U.S. Supreme Court.

"This is having a cascading impact," Jeff Clayton, Executive Director of the American Bail Coalition told the Sun-Advocate on Monday. "It's creating uncertainty right now."

The Obama Administration's Justice Department weighed in on the issue in the Walker case, stating in August of 2016 that keeping poor defendants in jail simply because they can't afford fixed bail amounts is unconstitutional and conflicts with "sound public policy considerations."

In an amicus brief filed in the case, the Department of Justice said that a long line of U.S. Supreme Court cases

have suggested the 14th Amendment is violated whenever justice hinges on the defendant's ability to pay.

The 14th Amendment says that states cannot deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

A 2015 case in Alabama cited similar arguments. A Dothan man who was arrested for public intoxication, Anthony Cooper, was the subject of a civil rights lawsuit after being jailed because he was unable to pay the \$300 in bail that was required for his release. Cooper was told that he would have to spend six days in jail awaiting a court hearing.

In response to the case, the City of Dothan changed its policy, stating that those awaiting hearings in Dothan Municipal Court would no longer be required to pay bail up front. The city moved to an 'unsecured bond' system where defendants owe money if they do not appear in court when they are required to do so.

The city of Clanton, Alabama also stopped requiring secured money bail for new arrestees in response to a lawsuit filed in that town, according to published reports.

The DOJ also weighed in on that case, citing similar 14th amendment arguments.

Other cases have gained attention in recent years, giving more attention to the push for changes.

But officials are voicing concerns about the implications for overturning the bail system, and how it might affect law enforcement's ability to seek justice for crimes.

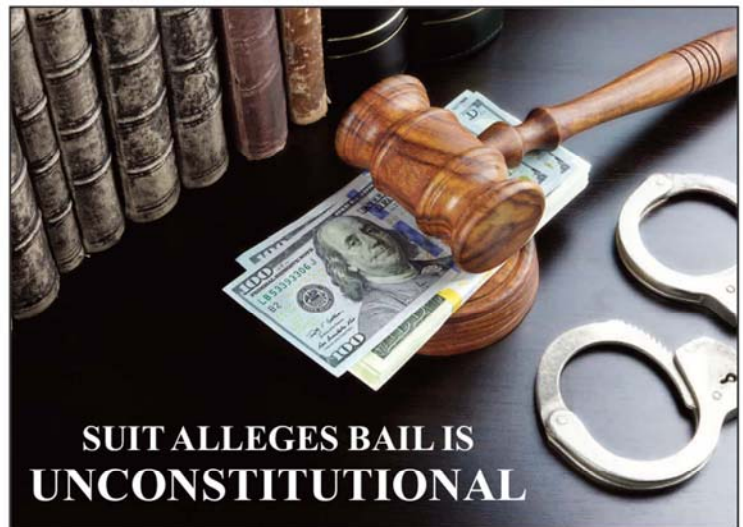
Clayton said that, in his experience, people don't show up for court without some reason to do so.

"Some are more likely to do so than others because there is more on the line," Clayton said. "With bail, you have to look at what happens after they don't show up. Someone is on the hook for it."

Clayton added that only about 5% to 10% of arrestees lack the resources to pay reasonable bail.

Some, like Cheris Burdeen of the Pretrial Justice Institute, have suggested that simply calling individuals before their court dates or sending them texts reminding them to appear is enough in most cases. But other officials scoff at such claims.

Choctaw County Sheriff Scott Lolley said that there are sometimes other rea-



SUIT ALLEGES BAIL IS UNCONSTITUTIONAL

sons for suspects not posting bail, reasons that have little to do with finances.

"Sometimes the family just chooses to leave the person in jail, for their own good, or to make sure nothing else happens," Lolley said. "Sometimes it's the best thing for that person."

Clayton agrees. "There are other reasons why people don't post bail," he said. "They want credit for time served, or other reasons."

Clayton said that, in some cases, family members opt not to help with bail because of ongoing problems with the arrestee, hoping to prevent further issues by leaving the suspect in jail.

Based on local pending warrants, Lolley said that a significant number of those charged with crimes locally do not show up for their court cases.

"The whole point of bond is to have the bondsman go get them if they don't show up," Lolley said.

Clayton suggested that the bail system may need some changes, to make the posting of bail more meaningful.

"The question is, what is meaningful bail?" Clayton said. "What does a hundred dollars really do? We need to set more meaningful bail, or cut people loose."

As for the Walker case, Clayton said that, in his opinion, the judges would likely not rule in favor of the plaintiff on the basis of their 'Equal Protection' claim, adding that the issue with the posting of bail is more a 'due process' issue.

Bail schedule in Alabama

Capital felony -- \$50,000 to none allowed
Murder -- \$15,000 to \$150,000
Class A felony -- \$10,000 - \$60,000
Class B felony -- \$5,000 - \$30,000
Drug manufacturing and trafficking - \$2,500 to \$15,000
Class D Felony -- \$1,000 - \$10,000

Misdemeanors
Class A -- \$300 to \$6,000
Class B -- \$300 to \$3,000
Class C -- \$300 to \$1,000
Violation -- \$300 to \$500

Municipal ordinance violations -- \$300 to \$1,000

Traffic-related offenses
DUI -- \$1,000 to \$7,500
Reckless driving -- \$300 to \$1,000
Speeding -- \$300 to \$500
Other traffic -- \$300 to \$500

"All three judges had major problems with the 'I can't make bail so I get immediately out' theory," Clayton said. "I don't think the 'equal protection' argument will fly with the Supreme Court. It flies on 'Due Process' if it flies at all."

CALIFORNIA★POLITICAL REVIEW

Clayton: LOCK UP YOUR CHILDREN – BAIL REFORM IS COMING SOON TO YOUR COMMUNITY

March 12, 2017 By Stephen Frank [Leave a Comment](#)

Is it justice that when an individual is arrested, then arraigned or indicted, they have to pay bail in order to get out of jail till their court date? Further, should a possible innocent person that is poor be forced to stay in jail because they can not afford the bail money? On the other hand, how do you force someone to show up for court, if there is no penalty for refusal? We know that between 3-7% of illegal aliens released after detainment show up for their hearing. Why should then. Detained in LA, move to Santa Ana, no big deal.

“Meanwhile, two weeks ago, the U.S. 11th Circuit Court of Appeals in Atlanta heard the case of *Maurice Walker vs. the City of Calhoun, Georgia*. The case alleges that the city of Calhoun and Georgia’s bail system is unconstitutional. It centers on an indigent man who was arrested and his assertion that he was denied bail simply because he couldn’t afford to pay the amount indicated by a set bond schedule. The outcome of the case may well eliminate what many consider the single most important component of the criminal justice – accountability. If a person knows that they will be released from jail with no monetary costs involved – and they are also aware that that if they don’t show up for court, no one will be coming to haul them in – there is almost no reason for them to be accountable for their actions.”

This is why we have an illegal alien problem. The Left now believes in equality for criminals. If criminals from foreign countries can avoid punishment, why can’t American born criminals? Good point.



Photo credit: Michael Coghlan via Flickr

[LOCK UP YOUR CHILDREN –BAIL REFORM IS COMING SOON TO YOUR COMMUNITY](#)

By Jeffrey J. Clayton, Executive Director, American Bail Coalition, 3/11/17

Bail laws are currently under siege across America and for anyone who cares about crime in their communities, this is definitely not a good thing. I wrote about this last fall and the situation is only getting worse.

The whole mess started in early 2015 when then-Attorney General Eric Holder, used his Department of Justice to support a non-profit group, Equal Justice Under Law, for the express purpose of eliminating the constitutionally-guaranteed right to bail.

New Jersey's new bail laws, passed by voters in 2014, finally kicked-in on January 1. The new laws are intended to aid persons arrested for minor crimes, but who can't afford to bail themselves out. Instead, court hearings are hastily convened for the purpose of determining whether or not the individuals are either flight risks or pose a danger to society.

Since the laws have been implemented, the majority have been released on their own recognizance. No money is put up. Rather, the defendant simply gives his "good word" that he or she will show up to court. If that sounds like a dubious proposition, you're right. There has been a steady stream of news stories emanating out of the state concerning individuals who have been released and almost immediately re-arrested, along with accounts of defendants whose release in the first place could be considered highly questionable.

Originally pushed by Governor Chris Christie and receiving bi-partisan support in the state legislature, the results of the new bail laws so far are making some New Jersey residents fear for their safety.

In one instance, a 20-year-old Ocean County man was arrested for soliciting sex from a 12-year-old girl in exchange for a video game console. He was arrested, but almost immediately released when a Superior Court judge determined he was not a danger to society. Shockingly, the state Supreme Court supported the decision.

In another case, a young man was arrested for breaking into a house. While being arraigned, the prosecutor's office for Middlesex County filed a motion to keep him in jail. Unfortunately, the Superior Court judge denied the motion and released Ward at the objection of the county prosecutor. Days later, the same man was arrested again, this time for burglarizing another home. A day later he was released back into society in accordance with New Jersey's new bail laws.

Meanwhile, two weeks ago, the U.S. 11th Circuit Court of Appeals in Atlanta heard the case of *Maurice Walker vs. the City of Calhoun, Georgia*. The case alleges that the city of Calhoun and Georgia's bail system is unconstitutional. It centers on an indigent man who was arrested and his assertion that he was denied bail simply because he couldn't afford to pay the amount indicated by a set bond schedule. The outcome of the case may well eliminate what many consider the single most important component of the criminal justice – accountability. If a person knows that they will be released from jail with no monetary costs involved – and they are also aware that that if they don't show up for court, no one will be coming to haul them in – there is almost no reason for them to be accountable for their actions.

The Calhoun case is one of many copycat cases that have littered our nation's courtrooms the past two years, since it was first initiated by the group Equal Justice Under Law and egged on by Attorney General Holder and the DOJ. The stakes are high, as this case has made it to the highest judicial level so far. And the impact of the ultimate decision is enormous, as it stands a very good chance of making its way up to the U.S. Supreme Court.

An "X" factor in the proceedings is what the influence of the Donald Trump presidency, under new Attorney General, Jeff Sessions, means to the Calhoun and other existing court cases — and to the concept of bail reform in general.

The concept of reasonable bail in our court systems is not a partisan issue, but rather is a matter of constitutionality, combined with a common sense approach to our criminal justice system. Both Republicans and Democrats supported New Jersey's new bail laws, but it represents an unfortunate example of why bi-partisanship isn't necessarily a positive development — especially when the issue they are supporting is dead wrong.

True bail reform can be achieved, but only when the parties making decisions consider all the facts before sending us down a slippery slope from which there is no return.

#

About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

Appeals court tells judge to try again in Calhoun bail case

[ATLANTA-NEWS](#)

By [Bill Rankin](#) - The Atlanta Journal-Constitution



U.S. District Judge Harold Murphy, who presides over cases in Rome.
(Photo by Alison Church/The Fulton Daily Report)

Posted: 1:46 p.m. Tuesday, March 14, 2017

The federal appeals court in Atlanta has thrown out an injunction against the city of Calhoun in a closely watched case that could determine how long misdemeanor offenders must remain jailed when they cannot afford bail.

The 11th U.S. Circuit Court of Appeals, while not ruling on the merits of the case, returned the matter to U.S. District Judge Harold Murphy in Rome. [Murphy's injunction, issued early last year, ordered the city to put in place post-arrest procedures "that comply with the Constitution."](#)

Murphy also said that "keeping individuals in jail solely because they cannot pay for their release, whether via fines, fees or a cash bond, is impermissible." He ordered the city to stop detaining arrestees for any amount of time if they are too poor to post bond.

The 11th Circuit told Murphy that [his injunction didn't give enough guidance to the city](#) on how it must comply with the minimal standards required by the Constitution. Murphy should have issued a more specific "operative command" that could be enforced and reviewed, the court said.

“We do not believe that, as written, the injunction can stand,” said the unanimous three-judge panel’s ruling issued Thursday.



Lawyer Sarah Geraghty (Photo courtesy of the Southern Center for Human Rights)

The lawsuit was filed by [Maurice Walker, who was arrested in 2015 for being a pedestrian under the influence of alcohol](#). He was detained for six days because he could not post a \$160 bond. The city has used a schedule that sets bail based solely on the crime being charged, not the offender’s ability to pay.

After Walker filed suit, the city changed its practice to give detainees a bond hearing within 48 hours after their arrest. Since Murphy issued his injunction, people charged in Calhoun with misdemeanors have been released on their own recognizance.

The northwest Georgia city’s bail practices have attracted national attention. The U.S. Justice Department’s civil rights division and the American Bar Association filed legal briefs in support of Walker’s position. Conversely, the Georgia Sheriffs Association, the American Bail Coalition and the Georgia Association of Professional Bondsmen filed motions in support of Calhoun’s practices.

“We knew Judge Murphy’s order would not stand either on the merits or as a matter of procedure,” said Jeff Clayton, executive director of the American Bail Coalition. “We will continue to work with our partners ... to finally put an end to these unmeritorious lawsuits.”

One of Walker’s lawyers, Sarah Geraghty, said the 11th Circuit’s decision cannot be characterized as a major victory for the bail industry.

“The court offered no opinion on the merits of the constitutional claim,” she said. “The case will go back to the district court where (Murphy) will have the opportunity to consider how to fine-tune his injunction.”



11th Circuit Strikes Blow at Effort to Declare Bail Unconstitutional

March 14, 2017 Local News, What's Happening



The United States Court of Appeals for the 11th Circuit vacated a grant of a preliminary injunction on Thursday, March 9 in the federal bail case of *Walker v. Calhoun, Georgia*. The remanding of the case back to the district court represents a major shift in the conversation as to the constitutionality of bail.

During the hearing, the presiding panel of three judges expressed considerable skepticism at the underlying and basic equal protection theories put forth in the case.

District Judge Harold Murphy had earlier granted an injunction against the city because he determined that the city's bail system discriminated against people based on their wealth.

However, in a unanimous per curiam order, the judges ruled that Judge Murphy's injunction order violated Rule 65 of the Federal Rules of Civil Procedure, insofar as it requires the city to simply follow the law, but then offers "no guidance" or specificity as to what the constitutionally minimal criteria may be.

Jeff Clayton, Executive Director of the American Bail Coalition said, "We knew Judge Murphy's order would not stand either on the merits or as a matter of procedure. Yet, we will continue to work with our partners, the Georgia Association of Professional Bondsmen and others, to finally put an end to these unmeritorious lawsuits whether it be in California, Texas, or Calhoun, Georgia."

Of a number of similar cases around the country that have challenged the constitutionality of money bail, only one has *not* been vacated on the theory of underlying equal protection (which offers that criminal defendants are discriminated against because they cannot afford to pay for their bail after arrest). The one case that escaped being vacated was in the U.S. District Court for the Eastern District of California, in which Judge Troy Nunley dismissed the plaintiff's claim in *Welchen v. Harris County, Texas*.

While the case will likely move forward again — presumably to another preliminary injunction hearing before Judge Murphy — the ruling represents a considerable victory in the fight for bail which is supported by former U.S. Solicitor General Paul Clement along with the Georgia Association of Professional Bondsmen, and the Georgia Sheriffs' Association.

Calhoun Times

U.S. Court of Appeals for the 11th Circuit sends bail case back to district court

Staff Reports

Mar 15, 2017



The United States Court of Appeals for the 11th Circuit vacated a grant of a preliminary injunction on Thursday, March 9 in the federal bail case of Walker v. Calhoun, Georgia, remanding the case back to the district court.

During the hearing, the presiding panel of three judges expressed concern at the underlying equal protection theories put forth in the case.

District Judge Harold Murphy had earlier granted an injunction against the city because he determined that the city's bail system discriminated against people based on their wealth, however, the judges ruled that Judge Murphy's injunction order violated Rule 65 of the Federal Rules of Civil Procedure, insofar as it requires the city to simply follow the law, but then offers no guidance or specificity as to what the constitutionally minimal criteria may be.

Of a number of similar cases around the country that have challenged the constitutionality of money bail, only one has not been vacated on the theory of underlying equal protection, which offers that criminal defendants are discriminated against because they cannot afford to pay for their bail after arrest.

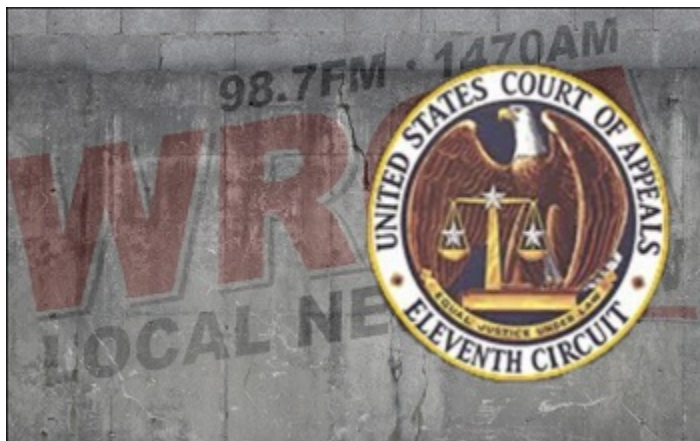
The case is expected to go to another preliminary injunction hearing before Judge Murphy.



Appeals court vacates grant of a preliminary injunction in Calhoun bail case

March 14, 2017--12:00 p.m.

Staff reports



The case of a disabled man who sued the City of Calhoun, claiming its bail procedures were unconstitutional, is headed back to U.S. District Court.

The U.S. Court of Appeals for the 11th Circuit vacated a grant of a preliminary injunction in the case of Maurice Walker vs. the City of Calhoun.

According to federal court records, Walker was arrested on September 3, 2015 for being a pedestrian under the

influence and was given a \$160 cash bond.

Walker alleged he could not pay the amount because he is indigent, so the city kept him in jail to await his first appearance.

Five days later, Walker filed a class action lawsuit in the U.S. District Court seeking a preliminary injunction to prevent the City from keeping him and others in jail just because they could not afford a secured monetary bond.

On January 28, 2016, U.S. District Court Judge Harold Murphy granted Walker's motion for a preliminary injunction and ordered the City to implement post-arrest procedures that comply with the Constitution.

The city appealed.

The appeals court found the order violated Federal Rule of Civil Procedure 65, because it requires the city to fashion constitutionally compliant post-arrest procedures, yet offers no guidance on minimal standards required by the Constitution.

The three-judge panel remanded the case to the district court for further proceedings, stating that they do not believe the injunction can stand as written.

Daily Record

PART OF THE USA TODAY NETWORK

LETTER: Public should know how bail decisions made

4:35 p.m. ET March 16, 2017



File photo New Jersey's municipal courts are tainted by local officials' drive to squeeze more revenue out of the system. File/Register Since 2011, Greenville grand juries have returned true bill indictments 99.9 percent of the time. Justice(Photo: ~File photo)

New Jersey's long-awaited bail reform laws finally kicked in on January 1, making it the first state to move to what is called a risk-based system. It works by utilizing government-operated computers running analytical software to supposedly predict whether a criminal defendant is likely to offend again or become a fugitive from justice. Supposedly is the key word, because so far, there are serious questions as to the accuracy of the results. More significantly, the very criteria used to make these determinations has been kept from the public by state officials.

The new system was created to eliminate posting bail either by cash or using a bail bondsmen by letting the new costly computers decide who stays in jail and who gets out for free.

Unfortunately, as bail reform began, we have already seen defendants engaging in dangerous, high-risk behavior. In one case, a man deemed by the computer to be low-risk was caught soliciting a 12-year-old girl for sex.

How can that be? That is because risk assessments only consider previous charges and convicted conduct. Strikingly, current charges are not factored in at all because it is considered unfair according to the algorithms. Ironically, bail in the U.S. has traditionally been based primarily on current charges, which seems fair and logical.

The public was sold on the premise that the new computers would do a better job than the judges they replaced — a reasonable expectation given millions of dollars of public money spent on it. These tax dollars could have been used for alternatives to bail

reform, such as drug or mental health treatment programs for defendants truly needing help.

Yet, the public, police, prosecutors, victims and judges all assume these computers actually work. This is supported by the premise that individuals who don't belong in jail under the Eighth Amendment are being held, while others who are dangerous are being released.

Practically speaking, can someone be considered low-risk when they've been caught dealing 37 bricks of heroin, soliciting sex from kids or burglarizing the Sunday school till at the local church? In point of fact, it is happening right now in New Jersey.

Many are asking questions about bail reform, but the real question is what does the state of New Jersey have to hide on these risk assessments? Disclose the computer program immediately and all data supporting it. Allow law enforcement officials and prosecutors to see behind the curtain, along with public defenders and defense lawyers. This will allow all parties to determine whether these risk assessments are truly predictive, while remaining race and gender-bias free.

It is time for the public to ask and the state to answer: Do New Jersey's new government bail computers actually work?

Jeffrey Clayton

Executive Director

American Bail Coalition

DAILY REPORT

U.S. Appeals Court Vacates Injunction Halting City's Practice of Jailing Those Too Poor to Post Bail

R. Robin McDonald, Daily Report

March 20, 2017



Elbert P. Tuttle U.S. Court of Appeals Building
Rebecca Breyer

A federal appellate panel in Atlanta whose members had offered [blistering verbal critiques](#) of lawyers defending the city of Calhoun's practice of jailing people too poor to post misdemeanor bonds never-the-less have handed the city an appellate win.

The three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit has vacated a preliminary injunction handed down last year by U.S. District Senior Judge Harold Murphy that had [held unconstitutional](#) Calhoun's practice of jailing indigent defendants accused of city ordinance violations and minor misdemeanors solely because they did not have the money needed to secure their release.

In a joint, unsigned opinion the panel—Eleventh Circuit Judges William Pryor and Adalberto Jordan and Bobby Baldock, a Tenth Circuit senior judge—chided Murphy for issuing a preliminary injunction they determined was too weak in providing any specific direction as to what the city needed to do to make its misdemeanor bond practices constitutionally palatable.

"Requiring the city to 'comply with the Constitution' is the arch typical and unenforceable 'obey the law' injunction," the opinion stated. Murphy's injunction, the appellate panel determined, did not include any "operative command capable of enforcement or review" and offered "no guidance on the minimal standards required by the Constitution."

Murphy issued the injunction in what has become a nationally-watched case after attorneys with the Southern Center for Human Rights in Atlanta sued the city of Calhoun on behalf of Maurice Walker, the lead plaintiff in the class action complaint. Walker—disabled by a mental disorder and unable to work—had been arrested for public intoxication in 2015 and jailed because he could not afford to pay a \$160 cash bond that would have secured his release. He remained in jail for six days until Southern Center attorneys stepped in and sued the city on his behalf.

Calhoun's bail bond schedule and its policy of detaining those who couldn't pay up remained in place until nine days before Murphy issued the injunction in February 2016. At that time, the city modified its practice to require that arrestees who couldn't post a cash bond must be released after 48 hours.

Calhoun's appeal of Murphy's ruling attracted the attention of the U.S. Justice Department and the American Bar Association, both of [which filed friend-of-the-court briefs](#) urging the Eleventh Circuit to affirm Murphy's rulings. Countering those briefs were others submitted by the Georgia Municipal Association and neighboring Alabama League of Municipalities and four Alabama cities that weighed in on behalf of Calhoun. So did the Georgia Sheriffs Association, the American Bail Coalition and the Georgia Association of Professional Bondsmen, which hired Washington lawyer Paul Clement to file an amicus brief defending Calhoun's bail policies.

Alec Karakatsanis, an attorney with the Washington-based nonprofit Civil Rights Corps who defended Murphy's injunction in oral arguments last month before the federal appellate panel, said that, although Murphy's preliminary injunction has been vacated, it has been remanded with instructions that more detail is required. Karakatsanis—who is challenging local governments across the country that have instituted similar bond policies that he said distinguishes and penalizes people simply because they lack an ability to pay—is partnering with the Southern Center for Human Rights in the Walker case.

"The whole purpose of bringing a case like this is to get a more clear ruling on what the law is," he said.

Karakatsanis said that municipalities such as Calhoun are using the misdemeanor cash bond system to generate revenues to support city services. A preset bond schedule for misdemeanors often matches the total of a fine and court fees and surcharges a defendant would incur if he or she pleaded guilty or was convicted, he said.

Karakatsanis labeled as "terrible public policy" the practice of jailing people who pose no threat to the community in jail—often for days—solely because of their inability to buy their freedom with a cash bond.

Sam Lucas, an attorney with Brinson Askew Berry in Rome who argued Calhoun's case before the appeals panel, could not be reached for comment. Calhoun City Attorney George Govignon also could not be reached.



Calhoun Lawyers: Bond Injunction Causing Missed Court Dates



An injunction has been lifted against Calhoun, Ga., over its detention of indigent defendants, but a lawsuit filed against the city continues.

OpenRoadPR/Pixabay

A legal battle out of Calhoun, Ga. over the constitutionality of jailing people too poor to afford bond is on its way back into the hands of a lower court.

About a year ago, a district court judge enjoined the city of Calhoun from detaining indigent defendants for misdemeanors or minor traffic cases. Last week, the 11th U.S. Circuit Court of Appeals lifted the injunction, saying it was too light on detail.

But lawyers for the City of Calhoun now say they're seeing a significant increase in the number of people missing court dates since the injunction was issued.

"The increase in Calhoun of failures to appear exceeded 100 percent during the time period that we were under the injunction," said Andy Davis of Brinson Askew Barry, the law firm defending the city. He says the firm's been looking at data from Calhoun courts.

U.S. District Judge Harold Murphy will make the next decision on what happens with the original lawsuit. The suit was brought by the Southern Center for Human Rights on behalf of a man who was jailed for six days for public intoxication. Maurice Walker's attorneys argued he couldn't afford bond, and keeping him detained because he's poor violates the equal protection clause.

The case has drawn national attention, including a brief filed by the U.S. Department of Justice under former President Barack Obama.

An attorney with a Washington-based non profit, Civil Rights Corps, defended the injunction before the appeals court last year. That group has been challenging bail policies like Calhoun's in cities across the country.

Lawyers for Calhoun said the effect they've seen there is playing out in other cities that have changed their bail policies when faced with legal challenges.

"Rome has had a similar effect. I know of at least three other jurisdictions we've talked to that have similar rises in those folks who fail to appear in court," said Davis.

The Southern Center declined to comment and Civil Rights Corps couldn't be reached by deadline.

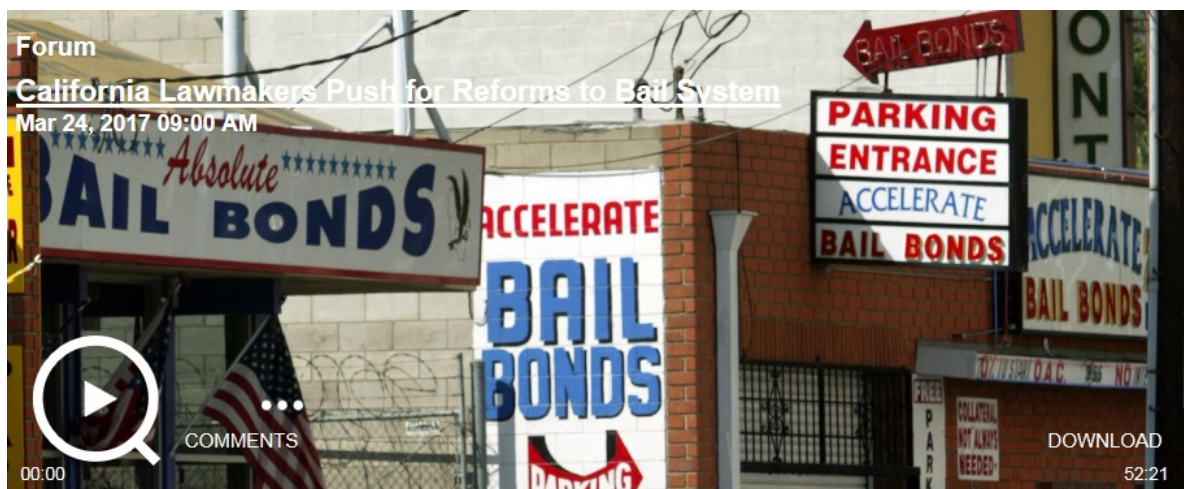
Because of the suit, the Calhoun's courts now releases people if they don't get a bail hearing within 48 hours of their arrest.

KQED News



Forum

California Lawmakers Push for Reforms to Bail System



Host: [Mina Kim](#)

March 24, 2017

Over 60 percent of people in California jails haven't been convicted of a crime, but are in custody awaiting trial. That's led some state lawmakers and civil rights advocacy groups to push for reforms to the state's bail bonds system. Those pushing for change say that people shouldn't be detained simply because they can't afford bail and that the state's exorbitant bail rates push low-income defendants to accept plea bargains. But bail agents and district attorneys argue that such reforms could destroy a system that ensures people show up for trial and saves taxpayers money. Meanwhile in Santa Clara County, law enforcement has been cracking down on illegal bail bonds operations, where longtime inmates use the promise of cheap bail to funnel incoming inmates to certain bail bonds companies. In this hour of Forum, we discuss the current state of California's bail system and debate potential reforms.

Guests:

Sukey Lewis, criminal justice reporter, KQED

Jeff Clayton, executive director and policy director, American Bail Coalition

Margaret Dooley-Sammuli, director of criminal justice & drug policy, ACLU of California

Assemblymember Rob Bonta, assemblymember, California's 18th District which includes Oakland, Alameda and San Leandro -



Will The US Justice Department Backtrack On Bail Reform?

Date: March 29, 2017



What is at stake is the single most vital component of our criminal justice — accountability. If the court upholds the plaintiff's contention that money bail is unconstitutional, there will be little incentive for a person who has been freed from jail to show up for court.

by [Jeffrey Clayton](#)

At issue is the snowball effect initiated by then-Attorney General Eric Holder and his Department of Justice in 2015. At that time, he intervened in an Alabama case (*Varden v. City of Clanton*) essentially contending that poverty alone is a reason for a person who has been arrested to not be held in jail.

This became the first of many copycat lawsuits around the country, each contending the same issue.

The endgame was to establish legal precedent. From a practical standpoint, if the court held in any of these cases that it was unconstitutional to hold an individual who can't afford bail one minute longer than an individual who can, it would open a Pandora's Box of federal lawsuits to any individual for whom a money bail has been set.

The net result would spell the end of the bail system.

Fast-forward to today. There are currently four cases — all essentially charging the same thing — at the appellate court level (two in California, one in Houston and one in Atlanta), any of which stands an excellent chance at making it to the U.S. Supreme Court.

The Department of Justice's continued involvement under Holder, in the specifics of local bail policy was seen by some as puzzling, especially considering their lack of any movement in reforming the federal bail system which had (and has) been widely characterized as broken.

What is at stake is the single most vital component of our criminal justice — accountability. If the court upholds the plaintiff's contention that money bail is unconstitutional, there will be little incentive for a person who has been freed from jail to show up for court.

If that individual gets out for free and knows that no one is coming to get them, there is, in fact, no oversight. And without oversight and accountability, public safety is put at substantial risk, with potentially dangerous individuals allowed to roam the streets.

The case in Atlanta, *Maurice Walker vs. the City of Calhoun, Georgia*, was heard last month and was almost immediately returned to a lower District Court on a technicality.

Paul Clement, Solicitor General under President George W. Bush had submitted an amicus brief on behalf of the defense. Considered by many as one of the greatest constitutional litigators of our time, Clement said, “bail is a liberty promoting institution as old as the Republic” adding, “our modern system of bail is not about poverty or wealth.”

Meanwhile, the Clanton case which started the whole thing, concluded with a settlement order that sets bail in all offenses in a monetary amount, with the condition that a judge must review it within 48 hours.

In other words, the use of monetary bail was already established and upheld with the settlement of this case.

A key thing to watch in the weeks and months ahead is what the influence of the Donald Trump presidency, under his new Attorney General, Jeff Sessions and his DOJ, means to the existing court cases and to the concept of bail reform in general.

About Jeffrey Clayton, Executive Director of the American Bail Coalition: Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years.

Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation.

He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

OPINIONS & COMMENTARY

FEATURED LETTER

New Bail Risk Prediction Computers Part Of Incredibly Flawed System

Much has been made about New Jersey's new bail risk-prediction computer. Highly touted for its use of sophisticated analytics, it invokes visions of sci-fi movie crime prevention of the future. In actuality, game show host Steve Harvey would be far more appropriate as the presenter of this bungled system.

Its true implementation simply takes a survey of criminals and their statistics while out on bail. A point system based on it is created and voila! Each defendant is assigned a decidedly low-tech score. Low score = get out of jail free; medium score = ankle monitor; high score = jail with no bail. It sounds easy, but it is nothing more than junk science, hidden behind view of both the public and criminal defendants.

In the movie *The Wizard of Oz*, the great and powerful Oz turns out to be neither great nor powerful. New Jersey's bail risk computers are similarly hiding behind a curtain. No one is allowed to inspect the mathematical assumptions or data that was used to build them, or even check the math. Instead, the public is told

that the great and powerful Oz, in the guise of the state, has spoken and they are left to trust it.

When deciding whether defendants get out of jail free or not, all we really have are some state officials playing Steve Harvey, asking, "And the survey says?" The computers then decide for us. Frankly, what the survey says is alarming.

The system is telling judges that people who have been arrested and have a history of dangerous behavior are not more likely to commit a new crime or flee. Therefore, they should be released from jail. This includes individuals who have repeatedly burglarized homes, solicited children for sex, fired guns at others, dealt 37 bricks of heroin in a poor neighborhood, threatened to kill police or have stolen money from a Sunday school.

The state of New Jersey must pull the curtain back on the new bail risk prediction computers and expose it for the fatally flawed system it is. The public has a right to know.

Jeffrey J. Clayton
Executive Director
American Bail Coalition

With Due Respect

After reading an article on ordinances that would prohibit dormitories in Jackson, I have to ask the Orthodox men quoted, who moved to Jackson in August: Why did you move here? Was it for the peace and quiet? Because of the proximity to work? Maybe it was the outstanding school system? These are legitimate reasons to move to a town. But you are not living in the town a year and you're accusing the town of Jackson and its residents of targeting the Jewish population. That's not very neighborly or friendly, and definitely not a very good way or start to making friends in your new home town.

Now I see it a little differently. I see the Jewish population as targeting Jackson, its residents and neighboring communities. I don't see you moving here for the reasons above. I see you moving here to change or convert our towns to accommodate the small Jewish population that is just beginning to move into the towns adjacent to Lakewood. I see the Jewish population forcing and pushing their cultural and religious way of life on Jackson, its residents and our neighbors. The way it has done in Lakewood for years.

The Jewish population has been moving here for a year or two. They make up a very very small part of our population and yet you are speaking openly that you're due

a Yeshiva even a dormitory which you're now fighting for. Only here a year or so and the Jewish population feels it needs to build to accommodate themselves? It doesn't sound right or make sense. It took years and generations of growth before Jackson saw a need to build a second high school.

Now before anyone who doesn't know me starts judging me for what I write and speak. I would like to say that I'm writing this with a very open mind. People who do know me would confirm this. My wife of 25 years who I love with all my heart is Jewish. My kids are Jewish. I have a sizable in-law family that is Jewish. There is a difference between my Jewish family and those of Lakewood. My family is what I like to call Americanized Jewish. Others say westernized. Either way, they did as my immigrant ancestors did. They came here got their citizenship and adapted to the American way of life, not try to change it. They practice their religion and traditions freely, openly and without hate, bias, prejudice or anti-semitism. That is the Jackson way and what makes us American.

We have the right to fight for our way of life and so we should, knowing the Jewish population is not moving into our towns and communities to better them, to respect them or for the reasons mentioned above. We like our way of life the way it is. That is the reason we have chosen to live here

and move here. A way of life without imposing a culture or religion on thy neighbor.
Joseph Flannery
Jackson

Stop Asking The Wrong Construction Questions

As A Firefighter, I am writing to urge our state legislature to strengthen our building codes before it's too late.

New Jersey has seen a significant rise in the amount of multi-unit apartment fires, and each time the fire services are called to come and put out what could have been easily preventable flames.

Whether these dwellings are mid-construction, or fully occupied, every time a building does up in flames our communities are threatened with tragic loss of life and property.

Legislators need to understand the connection between these fires and the use of lightweight, combustible wood construction as a means of quickly and cheaply erecting low-to-mid-rise residential buildings.

In January 2015, a fire destroyed a 240-unit apartment building in Edgewater, the wood structure burned for seven hours and left 500 people homeless.

More recently, a six-alarm fire in Maplewood destroyed part of an apartment complex under construction, again made from lightweight wood framing.

Fortunately, these fires have not resulted in loss of life, but a lax regulatory environment that encourages cheap construction in lieu of strong, durable construction materials such as steel and concrete will only lead to future blazes where we may not be so lucky.

State Assemblyman John Wisniewski, chairman of the New Jersey Fire Commission, has introduced legis-

lation seeking to amend the New Jersey state construction code with fire safety in mind. I urge his colleagues to follow suit.

Until legislators and code officials of all stripes mandate safer construction methods, we will continue seeing these structures built to the lowest common denominator.

When a building is being built there will always be those who ask, how quick, and how cheap? What we need are more people asking, how safe?

David Steward, NJ Fire Professional/Fire Police
Hamilton

Full Funding Needed

A new law that mandates tougher protection for thousands of children at risk of lead poisoning provides just a fraction of the potentially \$10 million needed to carry out the expanded health mission.

The law funds only 15 percent of what could be a \$10 million increase to health agencies.

This will challenge our health officials to effectively run this program.

There is no safe level of lead in a child's blood and the effects are irreversible. It can delay their growth, their moods, their personality and school performance, it can affect their thinking and concentration.

Full funding should be a priority for the New Jersey Assembly.

It should be remembered that the state raided millions of dollars from the lead hazard control assistance fund to pay for routine state bills and salaries, about \$50 million was diverted from the fund.

This should be reversed and fixed immediately.

Paul Schneider R.Ph
President, Monmouth County Board of Health

WE WELCOME LETTERS TO THE EDITOR!

The Southern Ocean Times welcomes all points of view for publication and provides this page as an open forum for residents to express themselves regarding politics, government, current events and local concerns.

All letters are printed as space allows unless deemed offensive by the editorial staff, and provided they are signed and include address & phone number for verification. Letters may not be printed if we cannot verify them. Names will not be

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California Pushes Major Reform of Bail System

MARIA DINZEO
April 5, 2017

SACRAMENTO (CN) — When Melodie Henderson was arrested 10 years ago, she had no idea it would be the beginning of a decade-long ordeal that would devastate her family financially and ruin her credit — until she was hit with a \$50,000 bond.

“When we heard that number, it was kind of this hopeless, sick-to-our-stomach kind of feeling,” Henderson told a group the California Senate Public Safety Committee on Tuesday.

Henderson had been living with her grandparents, who didn’t have the cash, so they paid a bail bondsmen using credit cards and money they borrowed from other family members.

“If we knew the hardships we would have to overcome after that decision, I may have chosen different for myself,” Henderson said. “The debt was pretty overwhelming. The bail bondsmen wouldn’t work with us. They wanted it paid in full in like four months. It was a very unrealistic payment plan. More credit card debt went into this. We were paying interest on top of interest.”

Stories like Henderson’s have spurred a recent legislative effort to end the commercial money bail system as we know it in California.

“Pretrial detention has become so lopsided that it really challenges the underlying constitutional premises of our government. Justice is determined by the size of your wallet, not your public safety risk,” said Sen. Bob Hertzberg D-Van Nuys.

He is co-author of a bill that would replace money bail with pre-trial risk assessments that will allow most detainees to fight their legal battles from home, rather than a jail cell.

“We’re going to have a system where we’ll be able to have efficient, rapid, accurate assessments of flight risk and public safety,” said Assemblyman Rob Bonta D-Alameda, co-author of SB 10.

The bill will require trial judges to consider a pre-trial report that evaluates each felony detainee’s level of public safety or flight risk, then either release that person on his or her own recognizance, or set bail at “the least restrictive level necessary to assure the appearance of the defendant in court as required.”

“This bill seeks to fix and transform a broken money bail system that punishes people for being poor,” Bonta told the Public Safety Committee. “This bill helps us achieve a trifecta, where we’re providing more justice for individuals who are arrested, where we will be providing more public safety because we’ll be using tools that specifically determine the safety risk and flight risk of an individual rather than using money as some rough and far from perfect proxy for safety. Finally, it will lead us to a place where we’ll be more prudently spending tax dollars.”

Bonta said he and the bill’s co-authors relied on studies showing that one-third of detainees are being held in jail because they can’t afford bail.

“So we’re essentially paying \$100 a day to keep folks who aren’t a risk to the public in jail,” he said.

The Senate Public Safety Committee sent the bill to the Appropriations Committee, the next step on the way to the full Senate.

Sen. Jeff Stone, R-Riverside, who sits on the Public Safety Committee, voted against it, saying he the bill will have the opposite of its intended effect.

“Superior Court judges are elected officials, and if I’m giving them the discretion to release someone on their own recognizance knowing that they have a high propensity to re-offend, I’m going to err on the side of keeping those people in jail,” Stone said. “So while I’ve heard arguments that we’re going to be emptying our jails out and creating capacity, I’m concerned that we’re actually going to be keeping more people in jail.”

Testifying against the bill, Jeff Clayton with the American Bail Coalition said: “I’ve heard that concern, that the risk assessments are conservative and can paint people as riskier than perhaps a judge might think, and so it can backfire. We have to trust judges to try to get it right.”

Judges already have the discretion to release pretrial detainees if they think do not pose a risk of flight or public safety.

Clayton said the real problem is that the bail schedules, which are set by individual counties, are just too high.

Sen. Steven Bradford, D-Los Angeles, asked Bonta whether he had looked at a single uniform bail schedule that might be more equitable.

“We’re moving sort of beyond that. We’re not going to be having bail schedules. We’re moving in a place where the bail schedules will not be a problem because we won’t be using them at all,” Bonta said.

Sen. Nancy Skinner D-Alameda, said she supported the bill because of people like Henderson who are not indigent, but were financially ruined by bail payments.

“It was not a situation where she or her family were completely without resources, but rather the bail circumstance then compromised them for over 10 years,” Skinner said. “Poverty doesn’t necessarily mean indigent. We don’t need to add to people’s poverty in our pursuit of justice.”

Henderson eventually signed a plea agreement. She was convicted of a felony and sentenced to community service. She finished her hours after 10 months, heavily in debt.

“My grandparents ended up having to make most of these payments for me, which was really hard for me,” she said. “The burden I placed on them was heartbreaking. I heard them having conversations about grocery shopping, and how much money they could afford for that.”

She made the last payment on her own and is now a small business owner, but still has blemishes on her credit.

“I ended up throwing 10 years of my life away,” Henderson said. “The hardship that bail debt caused me and my family ended up being the harshest punishment of all.”

Lawsuits have been filed in numerous cities, counties and states, particularly across the Midwest and South, challenging cash bail systems as unconstitutional discrimination against the poor, often with racial implications.

Defining Moment: Will California End Its Money Bail System?

In Society • April 17, 2017 • Jim Crogan



A nationwide movement that began 53 years ago to reform the pretrial incarceration and money bail process has finally reached the legislative committees and political bargaining tables in Washington and Sacramento. Reform advocates – including legislators, prosecutors, attorneys, judges and grassroots organizations – contend that the use of a money bail system for pretrial release is unfair to the poor and unsafe for the public.

In 1964, then-U.S. Attorney General Robert Kennedy told the Senate: “Every year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They are not yet proven guilty. They may be no more likely to flee than you or I. But nonetheless, most of them must stay in jail because to be blunt, they cannot afford to pay for their freedom.”

Kennedy’s efforts helped pass the Criminal Justice Act of 1964 and the Bail Reform Act of 1966, which created a presumption of release before trial for most federal defendants, and mostly did away with the money bail system in federal proceedings. But not for local and state jurisdictions, which account for most of the country’s jail population and in which the money-bail system still controls the release of defendants, dangerous or not. Only two countries, the U.S. and the Philippines, currently use the money bail system, according to California legislators.

Four months ago California State Senator Bob Hertzberg (D-Van Nuys) and Assemblyman Rob Bonta (D-Oakland) introduced the California Money Bail Reform Act of 2017 — identical pieces of legislation (Senate Bill 10 and Assembly Bill 42) that would phase out excessive money bail systems statewide for most misdemeanors and some nonviolent felonies. And this past March, Los Angeles-area Congressman Ted Lieu introduced the No Money Bail Act of 2017 in Washington.

Median bail in California is \$50,000. If an arrestee uses a bail bond agent, he or she has to pay the agent a nonrefundable 10 percent for release – in the case of the median bond, that’s \$5,000. Even bail for many misdemeanors can run over \$1,000 – still beyond the reach of many indigent

defendants. This results in poor defendants spending weeks or months in jail awaiting trial, causing the loss of jobs, homes, cars and in many cases, the family's primary breadwinner.

According to a **report** issued by the Public Policy Institute of California (PPIC), more than 62 percent of county jail inmates are awaiting trials or sentencing, translating into about 46,000 Californians on a daily basis, say Hertzberg and Bonta. Most remain in jail because they can't afford bail.

"The current cash bail system is the modern equivalent of a debtor's prison — it criminalizes poverty, pure and simple," Hertzberg told a December news conference when he and Bonta introduced their legislation.

"In many cases," added Bonta, "if you have enough money to pay your bail, you can get out of jail regardless of whether you are a danger to the public or a flight risk. But if you're poor and not a flight risk or a danger to the public, you are forced to stay in jail, even when the charge is a misdemeanor. That's not justice."

Ato Walker of San Jose shared his own story at that same press conference.

"I was falsely accused of something and went to jail for five days," Walker told reporters.

"My bail was \$165,000 initially and through the arraignment my bail got to be down to \$85,000," he said. "And that's after I had hundreds of letters of support from people in my community saying I was a decent human being...but still inside the courtroom the district attorney said it seems like he's a threat to society and the judge went with that."

Walker was released, he said, when his mother, a retired U.S. Postal Service worker, came up with the 10 percent he needed to pay a bail agent.

A choked-up Walker, who was there with his young son, said he recognized he would have had to stay in jail. "If my mother had not stepped up and taken money out of her retirement account ... [she did] that so I could be there to support my family."

When Walker eventually went to his pretrial proceeding, he said, the charges against him were dropped. But his mother lost the money she had to give a bail agent to get him out of lockup.

Walker said he appreciated the support that he got from his family and the community, but that he knew that many poor detainees don't have that support and he wanted to publicly thank the politicians who are trying to change the current bail system.

Bonta and Hertzberg are heading a coalition of support that includes Lt. Governor Gavin Newsom, the American Civil Liberties Union, Californians for Safety and Justice, the Ella Baker Center for Human Rights, the Essie Justice Group, Western Center on Law and Poverty, Service Employees Union International, California, and others.

Instead of relying exclusively on a money bail system that forces people to pay nonrefundable deposits to private companies, Bonta and Hertzberg are seeking a system that follows the lead of the federal government, the District of Columbia's local courts and a number of other states that have already reformed their systems.

Those systems rely mainly on pretrial services and assessment examinations to cut down on the pretrial jail population, thereby saving tax money, increasing rates of court appearances by

detainees who have been bailed out and protecting the public by refusing bail to inmates deemed a danger to society or a flight risk, no matter how much money they have.

Assemblyman Richard Bloom (D-Santa Monica) a coauthor of AB 42, said at the December news conference that research has shown that “prisoners held two or three days are 22 percent more likely to fail to come to court.”

The proposed legislation, as currently written, will require counties to set up a “pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court and providing pretrial services and supervision to persons on pretrial release.” It also:

- Provides for the use of “unsecured appearance bonds,” by which defendants agree to pay a specific amount if he or she fails to appear in court.
- Gives reminders to defendants about upcoming court dates, and helps with transportation, if needed. Money bail options are included in these bills, provided the bail is the “least restrictive necessary to assure the appearance” in court, and the court must conduct an inquiry to determine the defendant’s ability to pay the bail.
- Enables prosecutors to file a motion for pretrial detention and precludes people from being eligible for pretrial release if they are charged with a capital crime, a felony involving violence or sexual assault, or if the person’s release would likely result in harm to others, or if the person had threatened harm to others.

Hertzberg’s bill passed through the Senate Public Safety Committee by a 5 to 1 vote in early April and is headed to the Senate Appropriations Committee. Bonta’s version of the bill receives a hearing Tuesday in the State Assembly’s Committee on Public Safety.

The cost to house California inmates averages about \$114 per day, according to the PPIC. In Los Angeles the average cost for Fiscal Year 2015-2016 was slightly more than \$178 per day, according to the Los Angeles County Sheriff’s Department, which reports that about \$797 million – or 24 percent of the department’s total budget – goes to operate the county’s jail system.

There’s been no study done in L.A. County regarding how many inmates remain in its jail system because they are too poor to post a money bail, said sheriff’s spokeswoman Nicole Nishida.

Based on the experience of other locales, Bonta said, he’s learned that most nonviolent offenders will show up for their court appearances and not commit additional crimes after they’ve been released from jail without posting a money bond. “I also learned that over 50 percent of the jail cells were being taken up by people who couldn’t pay bail,” Bonta said, noting that the current money bail system is “clearly discriminatory against the poor and people of color.”

In addition to a mandatory pretrial risk assessment examination, Bonta told [Capital & Main](#), he’s also open to using ankle monitoring systems and even small bail amounts — for example, \$100 — as a very last resort.

Beth Chapman, the wife and business partner of the reality TV bounty hunter, Duane “Dog”

Chapman, [has testified](#) before a federal Court of Appeals panel that “People are not in jail because they’re poor. They are trying to paint a picture that all poor people are languishing in jail, and it just

isn't true." She has also appeared in Breitbart News interviews on the subject of bail reform, which the right-wing site has connected to plots allegedly hatched by billionaire **George Soros and others**.



Beth Chapman with husband, Duane "Dog" Chapman (L):
"People are not in jail because they're poor."

Capital & Main's repeated phone calls for comment to the Professional Bail Agents of the United States, a trade group Beth Chapman heads, were not returned. The **organization's website**, though, warns in red letters that "The bail industry is under attack!" Capital & Main's calls to another bail-bonds trade organization, the California Bail Agents Association, were also not returned.

Jeff Clayton is the executive director of the Lakewood, Colorado-based American Bail Coalition, a 10-year-old trade association representing insurance underwriters of bail bonds across the country. In California, he said, all bail bonds must be underwritten by an insurance company.

Clayton told Capital & Main that nationwide, the bail bond industry is a multibillion dollar business and that lobbying efforts against the California and House versions of bail reform are in full swing. He insisted the vast majority of bonds issued help guarantee that defendants would show up for court.

Clayton acknowledged that there were problems related to the top 10 percent of bonds issued to defendants who could be dangerous or flight risks, and to the bottom 10 percent of indigent defendants.

He said that the industry would be open to working with legislatures to fix those problems, especially regarding misdemeanor defendants.

Clayton also said there were discussions underway with Hertzberg and Bonta's offices on their proposed bills and that he felt confident that a "viable compromise," which would maintain the money bail process in California, could be worked out.

Ted Lieu's previous No Money Bail Act died in the House last year. His 2017 version is short and straightforward. It would prohibit the payment of money as a condition of pretrial release in any federal case. (Federal judges can still order property bonds as a condition of release.) It would also amend the Omnibus Crime Control and Safe Streets Act of 1968 to make any state that did not

reform its bail system within three years of passage and signing of this law, ineligible for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program.

In Fiscal Year 2016 California received more than \$28.9 million in JAG awards, with more than \$10.7 million going to counties and cities, and more than \$18.2 million going to the California Board of State and Community Corrections, according to Lieu's office.

"Some conservatives and libertarians have shown interest because reform will save tax money and the bill is flexible on how states can handle the reform process," Lieu said. "Kentucky is a very red state and yet they have instituted reform measures in their bail system."

The U.S. Justice Department, under former President Barack Obama and Attorney General Eric Holder, also weighed into the debate over bail reform, filing friend-of-the-court briefs in several cases in Georgia and Alabama in 2015 and 2016 — calling money bail systems that continue to jail defendants because they are poor unconstitutional. Civil rights division attorneys filed court papers stating categorically that "bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violate the Fourteenth Amendment." Justice Department attorneys also **stated**, "Fixed bail schedules that allow for the pretrial release of only those who can pay, without accounting for the ability to pay unlawfully discriminate based on indigence."

Washington, DC's local courts have the most experience using a pretrial release system that is based on inmate assessments rather than money bail. Cliff Keenan is the director of DC's Pretrial Services Agency, a federally funded, independent entity within the Court Services and Offender Supervision Agency charged with formulating release recommendations and providing supervision and services to defendants awaiting trial. His office handles some 22,000 cases a year, including 4,000 felonies and 17,000 misdemeanors.

Keenan told Capital & Main that the District stopped using any money as a condition of pretrial release in 1992, when a new Bail Reform Act mandated that defendants would receive a hearing with 24 hours of their detention to determine their release status. The act's reforms have also enabled judges to hold defendants without bail, Keenan said, "if they were determined to be a flight risk or a danger to the community or to witnesses in their case."

While there have been failures, Keenan pointed to his office's **latest published figures** showing that "91 percent of released defendants remained arrest-free while their cases were adjudicated; 98 percent of released defendants were not rearrested for a crime of violence while in the community pending trial; 90 percent of released defendants made all scheduled court appearances and 88 percent of released defendants remained on release at the conclusion of their pretrial status."

New Jersey, the most recent state to reform its former money bail release system, began its new system in January. Elie Honig, New Jersey's Director of the Division of Criminal Justice, told Capital & Main the bail reform process began in 2014 and first required a vote to change the state's constitution so that dangerous criminals charged with non-capital crimes could be held without bail after their arrest.

"The reforms have focused more of our attention on dangerous cases – and in those cases prosecutors are fighting hard for detention without bail," Honig said. The first report on the impact of the state's reforms is due by the end of June.

New Jersey's new system uses a computerized Public Safety Assessment (PSA), six-point tool to quickly issue a score for each defendant based on various risk factors, including the seriousness of

the alleged crime, and the defendant's criminal and court history. The PSA tool, Honig said, was not the endpoint but a starting line for determining whether a defendant could be safely released. The state's pretrial services agency is then charged with providing a full assessment of a defendant's risk for release before a judge determines the final outcome.

The new law also mandates a speedy trial system for defendants, Honig continued, requiring that a detained defendant must be arraigned within 90 days of his or her arrest and the case brought to trial within 180 days.

Neither L.A. County District Attorney Jackie Lacey nor the U.S. Attorney's office in Los Angeles would comment on any of the pending bail reform legislation offered by Lieu, Hertzberg or Bonta. Los Angeles County Sheriff's spokeswoman Nicole Nishida told Capital & Main it was "too early [for the sheriff] to comment on this [California legislation] since the language is still being finalized by Senator Hertzberg and Assemblyman Bonta."

So far, law enforcement opposition includes the Association for Deputy District Attorneys, the Riverside Sheriffs' Association several uniformed-officer unions.

"I don't expect Lieu's legislation to go anywhere," said the American Bail Coalition's Jeff Clayton. "States make more money off [taxing] the bail bond industry than they would lose in JAG grants, so I don't think you can coerce them into making reforms." Besides, he said, "Cash bonds are tools that judges can use to insure that justice is done. You want to give judges more tools, not take them away."

Despite a Republican-controlled House and Senate, and the election of Donald Trump as president and a Justice Department now overseen by a hardline conservative, former Alabama U.S. Senator Jeff Sessions, Congressman Lieu remains optimistic about his bill's prospects.

Echoing Bonta and Hertzberg's assertions that a money bail system was patently discriminatory against the poor and people of color, Lieu noted that there are more than 450,000 people nationwide now sitting in jail — many if not most of whom are there just because they can't afford to post bail. "America's criminal justice system isn't just broken," Lieu said, "it violates our nation's core values."

The Modesto Bee

modbee.com



A cell inside one of the maximum security detention units at the Stanislaus County Public Safety Center in Modesto, Calif. Modesto Bee file Andy Alfaro

JEFF JARDINE

APRIL 17, 2017 4:57 PM

Will state bail on bail? AB 42 would eliminate bucks for bonds as judge decides who stays, goes

By Jeff Jardine
jjardine@modbee.com

You (or someone who looks just like you) have been arrested and hauled down to the county jail to be booked, fingerprinted, your mug shot taken and allowed that all-important phone call.

Whether you use it to phone a bail bond agent directly or have someone else call for you, depending upon the alleged crime you can be free within in a couple of hours – presuming you can raise the 10 percent down.

But Tuesday in Sacramento, state legislators likely will take a step toward joining a number of other states in the nation that have eliminated bail altogether. Assembly Bill 42, authored by Rob Bonta, D-Oakland, goes before the State Assembly's Committee on Public Safety on Tuesday, where it is expected to move on to the appropriations committee toward a possible floor vote in June.

If passed, those arrested would no longer have to pay monetary bail. A judge would determine whether they would be released on their own recognizance or are too much of a threat to society to go anywhere but a jail cell to await trial.

At that point, the word "bail" would be relegated to reference a part on a fishing reel or getting water out of a leaky boat.

Proponents claim the current bail system, which uses an established bail fee schedule based upon the severity of the crime, unfairly favors those with the financial means to post bail and unfairly punishes the poor, a contention bolstered by the Obama Administration in 2016.

Bail reform went into effect Jan. 1 in New Jersey, where one former police chief in Monday's Newark Star Ledger newspaper hailed it as a benefit to the community in an op-ed piece. Yet, five days earlier in the same paper, a column by Bill Gallo Jr. detailed how a man was released

by a judge following a weapons charge allegedly killed someone three days in what police officials called a failure of the state's new bail reform law.

The bill follows a trend in Sacramento. AB 109 in 2011 brought realignment, pushing down to the counties the need to house many inmates who otherwise would be in state prisons. Prop. 47 downgraded an number of drug possession felonies to misdemeanors, which also impacts the local jail populations. And last November, voters approved Prop. 57, which increased the chances for parole based upon good behavior while imprisoned. SB 260 allows those who committed crimes as teens to apply for early parole hearings.

Now, AB 42 and its state Senate counterpart, SB 10, would effectively eliminate bail, something law enforcement and the bail bonds industry vehemently oppose.

Stanislaus County Sheriff Adam Christianson railed at it as victim exploitation by politicians in Sacramento who "want to fix a system that isn't broken," he said.

"I stand with the victims of crimes and I oppose anything that stops accountability," he said. Already, he said, there are far too many warrants issued for failures to appear in court for defendants out on bail or OR'd by judges, he said.

"Do you think they are going to abide by that (court dates without bail money to forfeit)?" he asked.

A judge, he said, could determine that a defendant be fitted with a GPS ankle bracelet at the taxpayers' expense.

The irony is that some would spend more time in custody than they would if they could simply post bail, said Jeffrey Clayton, who represents the American Bail Coalition, which describes itself as "a non-profit organization that is committed to developing the most efficient means for the pretrial release of criminal defendants by reducing the financial impact on state government and taxpayers, while maximizing public safety."

"On the front end, it's how long it will take the state to do an assessment (of whether the inmate deserves to be released)," Clayton said. "It slows the process down. Every county will have to more people – judges, prosecutors and public defenders to argue the assessments)."

And Topo Padilla, president of the Golden State Bail Agents Association, defended his industry as the leverage that forces bailed-out defendants to keep their court dates. California has about 3,200 licensed bail agents and 3,800 more who work in clerical positions at the bond agencies.

"Some agents will say they are being forced to fight for their jobs," he said. "Screw that. Nobody cares about our jobs. It's about having safer communities. (Defendants) need to be held accountable and the best way to ensure that is for them to have a skin in the game. They miss their court days we're on the hook for the amount of the bail bond. I'm going to come looking for you, hunt you down and return to you to court at no cost to the taxpayers."

Without the bondsmen and bounty hunters, "nobody is going to go get 'em," he said.

Padilla said his organization has advocated for years for an overhaul of the bail schedules, which are in many cases exorbitant. But to eliminate it completely?

"People in the jail and in the criminal world must be saying to themselves, 'Why in the hell are these people advocating for us? They're just making our lives better as criminals'."

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Bail Bonds Firms Push Back Against Reform Legislation

By [Gene Cubbison](#)



Under a proposed law modeled after a New Jersey law, California judges could release non-violent defendants without imposing bail. NBC 7's Gene Cubbison reports.
(Published Monday, April 17, 2017)

Under a proposed law modeled after one in New Jersey, California judges could release non-violent defendants without imposing bail.

Our state's bail industry warns it's an idea that could boost crime.

Assembly Bill 42 comes up for a preliminary vote in the Legislature on Tuesday.

It's aimed at keeping defendants who can't afford bail from being held indefinitely before the trial process.

And it could put bail bonds companies out of business.

Law enforcement groups haven't taken a position on the legislation.

Meanwhile, the state Supreme Court is studying the issues for a report in December.

But opponents say early results in New Jersey show an increase in crimes committed by people who were just released on "their own recognizance", at no cost.

Under AB 42, counties would conduct pre-trial "assessments" as to whether someone arrested is a safety threat or risk not to show up for court.

Based on that, judges would decide whether to release those booked for serious felonies, domestic violence, stalking or violating a court order.

While the legislation also is aimed at reducing jail costs and overcrowding, critics say there have been big "hidden costs" in New Jersey, and questions raised about factors in the assessment methods.

"I believe it's sort of a slippery slope," said Steffan Gibbs, CEO of All-Pro Bail Bonds. "We're running into a place where the government is going to be deciding who gets out a who doesn't and what conditions they have to follow."

In an interview Monday with NBC 7, Gibbs offered this cautionary note: "There are many unforeseen circumstances down the road where before, people could have gotten out of jail, and now they're waiting three or four or five days for the government service that's provided through pre-trial to get themselves out."

The Assembly bill is identical to one in the state Senate, SB 10, which already has crossed its first hurdle.

Seven other states are looking at similar reforms.

Gibbs suggests that instead, California should adopt a centralized bail schedule and explore other ways of reforming the system.

Published at 4:05 PM PDT on Apr 17, 2017 | Updated at 10:10 PM PDT on Apr 17, 2017



Law Enforcement Expresses Public Safety Concern Over Criminal Bail Bill

Posted by: Perry Smith • in Court, Santa Clarita • Latest News April 18, 2017

California lawmakers took the first step in another sweeping reform of the criminal justice system, fundamentally changing how the court considers bail.

The Assembly's Public Safety Committee is expected Tuesday to vote on Assembly Bill 10, which would require the court to release a defendant being held for a misdemeanor on his or her own recognizance — unless the court makes an additional finding on the record that there is no condition that would reasonably ensure public safety and the appearance of the defendant if released. An identical companion bill, SB 42, is being discussed in the Senate.

"It is the intent of the Legislature to enact legislation that would in enacting this act to safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system," according to the text of the Assembly bill, "and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail."

The concerns from the criminal justice community were myriad Tuesday, ahead of the vote in the Assembly's Public Safety Committee.

The Association of Deputy District Attorneys published a strong editorial condemning the reform as a rush to judgment that poses a safety risk:

"Make no mistake, there is a problem with our current bail system. There is no question that it is unfair to the poor. Nor does it make sense that bail for violent criminals serves any public interest. But these two pieces of legislation are not the solution... These two bills allow defendants, including those accused of capital crimes that carry the death sentence, to remain free pending their trial if they meet certain criteria. Further, when considering bail, the legislation gives scant weight to the criminal history of an arrestee or the arrestees' prior history of failing to appear in court."

This last complaint has been one of the broader concerns with the recent implementation of the voter-approved measures Prop 47 and Prop 57, according to many in the law enforcement community.

"The fact that our state constitution mandates that public safety be the primary factor in weighing pretrial release is ignored by these bills," according to the editorial from the union for county prosecutors.

The American Bail Coalition also issued a strong statement ahead of the vote:

"A vote today to approve this legislation will move the State of California one stop closer to a radical shift in bail policy that will significantly reduce the availability of bail to Californians and will subject them to staying in jail until the government can evaluate them with their new bail computers. At the conclusion of the hearing today, however, it appears the bill will need significant additional work as it continues through the process."

This bill would declare the intent of the Legislature to enact legislation that would safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail.

The arguments in favor, according to the American Civil Liberties Union, which supports the bill, note that thousands are incarcerated due to the cost:

“Every year in California, thousands and thousands of people are jailed while they await their trial simply because they can’t afford to post bail. In a state where the median bail amount is \$50,000, it’s no surprise that many people simply can’t afford to buy their freedom in this broken system. AB 42 would help fix that.

Here’s a look at the text of the law, SB 10:

This bill would implement a revised pretrial release procedure. The bill would require, except when a person is arrested for certain felonies, that a pretrial services agency conduct a pretrial risk assessment on an arrested person and prepare a pretrial services report that includes the results of the pretrial risk assessment and recommendations on conditions of release for the person immediately upon booking. The bill would require the pretrial services agency to transmit the report to a magistrate, judge, or court commissioner and the magistrate, judge, or court commissioner, within an unspecified number of hours, to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement.

The bill would require, if a person is in custody at the time of his or her arraignment, the judge or magistrate to consider the pretrial services report and any relevant information provided by the prosecuting attorney or the defendant and to order the pretrial release of the person, with or without conditions, subject to the person signing a specified release agreement. If the judge or magistrate determines that pretrial release, with or without conditions, will not reasonably assure the appearance of the person in court as required, the bill would require the judge or magistrate to set monetary bail at the least restrictive level necessary to assure the appearance of the defendant in court as required. The bill would authorize, if the judge or magistrate has set monetary bail, the person to execute an unsecured appearance bond, execute a secured appearance bond, or deposit a percentage of the sum mentioned in the order setting monetary bail.

The bill would authorize a prosecuting attorney to file a motion seeking the pretrial detention of a person in certain circumstances, including when the person has been charged with a capital crime and the prosecuting attorney alleges that the facts are evident or the presumption great. The bill would require, if this motion has been filed, a hearing to be held to determine whether to release the person pending trial, unless the person waives the hearing. The bill would authorize the person to be detained pretrial only if the court makes one of several specified findings.

The bill would require each county to establish a pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court regarding release options and conditions, and providing pretrial services and supervision to persons on pretrial release.

This story will be updated as soon as more information regarding the vote is available.

CA Looks To Bail On Bail

By Gene Nichols | Apr 18, 5:44 AM



The California General Assembly Public Safety Committee is set to vote to do away with bail in the California justice system.

Technically, it's called bail reform.

In reality, it does not reform bail, it just ends it.

Assemblyman Rob Bonta is pushing the bill.

People arrested in California would be released on their own recognizance while they wait for their trial to begin, if there is a trial.

Judges would have the authority to keep dangerous offenders behind bars on no bail, pending the start of a trial.

The line of thinking is that wealthy people post bail and get out of jail, while poor people cannot post bail, and have to stay in jail.

The Assembly Public Safety Committee will debate the bill on Tuesday April 18th



California bail reform bill to be voted-on in State assembly's committee on public safety On Tuesday

4:33 PM, Apr 18, 2017



A bill to reform bail in California, introduced by Rob Bonta (D-Oakland), will be heard before the California State Assembly's Committee on Public Safety. It seeks to eliminate all financial conditions of bail, while implementing a "risk-based" computer system to inform judges which defendants they should release on their own recognizance and who to keep in jail.

AB 42 emulates the system created under the Obama Administration by former Attorney General Eric Holder. It is very similar to the one recently adopted in New Jersey, which took effect on January 1 of this year. Results in New Jersey so far have generated controversy, after reports of serious offenders committing repeat crimes while out on free bail. Law enforcement and other groups are now calling on state officials to re-visit bail reform.

Jeffrey Clayton, Executive Director of the American Bail Coalition, a non-profit organization that is committed to developing the most efficient means for the pretrial release of criminal defendants by reducing the financial impact on state government and taxpayers, while maximizing public safety.



FLEISCHMAN: California ‘Bail Reform’ Legislation Aces Out Crime Victims



Rich Pedroncelli / Associated Press

by [Jon Fleischman](#) 20 Apr 2017

Liberal legislators in Sacramento are continuing their efforts to change California’s criminal justice system with a new proposal for “bail reform” that leaves victims of crime out in the cold.

From the politicians’ perspective, their reforms are aimed at making the system more equitable for those accused and convicted of criminal activity.

In two identical proposals by two Capitol Democrats — State Senator Robert Hertzberg (D-Encino), primary author of [Senate Bill 10](#), and Assemblymember Rob Bonta (D-Alameda), primary author of [Assembly Bill 42](#) — the state would fundamentally overhaul the pre-trial release process, largely doing away with the surety bail system. That system would be replaced with one that has a heavy bias towards releasing those charged with non-violent, non-serious felonies (including residential burglary) and misdemeanors on their word that they will return to court for their required appearances.

The mirror proposals going through the legislative process would also reduce the current bail schedule based on seriousness of charges to a new method where a judge must set bail at the lowest amount possible the amount that a judge feels would be necessary to ensure the accused individual would not be a flight risk.

However, a review of the legislation reveals that it is structured in a way to significant reduce the role of crime victims in this process, despite the passage in 2008 by voters of a [Crime Victims' Bill of Rights, Marsy's Law](#), to ensure that victims would have, among other rights, the ability to have a voice in the criminal justice process.

Under the current system, the potential pre-trial release of someone charged with a crime takes place at an arraignment hearing. California's Constitution requires that victims be notified of public hearings, and that they have a right to be present, and to be able to make a statement to the judge. These rights not only ensure that victims are treated with dignity and respect, but also allow a victim to weigh in on potential release conditions.

The proposals by Hertzberg and Bonta would, in the case of all misdemeanors and many felonies, shift the decision process on pre-trial release of those charged with crimes from a hearing (where victims have rights) to an administrative process where an agency completes a pre-trial assessment report and arrestees are released without a public hearing at all, based on findings in the report.

Nowhere in the legislation is consideration given to provide victims with notification that this assessment is taking place. Nowhere is a victim given an opportunity to provide input to the assessment. If a victim has a concern for his or her safety, and perhaps would like a protective order against the individual being released, there is no way for the victim to be heard, or for his or her concerns to be taken into account.

This effort made [headlines](#) this week when famed bounty hunter Duane Chapman, the star of the reality TV show "Dog The Bounty Hunter" for eight seasons, appeared in an Assembly Public Safety Committee hearing to testify against the legislation. The committee narrowly passed the legislation, with three Democrats voting yes, one Democrat abstaining, and the two Republicans voting no.

The Senate version of the bill passed through that chamber's Public Safety Committee earlier this month, with all five Democrats voting yes, and lone Republican vote against it. Both bills must pass an additional committee before heading to the Assembly and Senate floors, respectively, for a full vote. Ultimately one of the bills will need to cross over and be passed by the other chamber before heading to the Governor's desk.

Primary supporters of this legislation include the American Civil Liberties Union (ACLU), public defenders, and criminal defense lawyers, as well as various social justice groups – primarily arguing that the current system disadvantages those who cannot afford to pay bail.

Opponents are largely public safety organizations and, of course, bail bonds companies – who feel that this change would lead to an increased number of those accused of crimes fleeing, or committing other crimes while released.

This legislation follows on the heels of other controversial changes to the criminal justice system in California, including prison realignment, a ballot measure approved that reduced sentencing guidelines for many significant crimes; and a proposal approved by voters last November that ends determinative sentencing, and which will allow a great many convicted felons to come up for parole significantly earlier.

These ballot measures were passed largely on the strength of misleading ballot titles and summaries issued by then-Attorney General, now U.S. Senator, Kamala Harris.

Jon Fleischman is the Politics Editor of Breitbart California. You can follow him on Twitter [here](#).



THE COMMUNITY VOICE: Letters to the Editor

Posted on 14 April 2017

And The Survey Says? New Jersey's New Bail Risk Prediction Computers Base Bail on Criminal Survey Data

By: Jeffrey J. Clayton, Executive Director, American Bail Coalition

Much has been made about New Jersey's new bail risk-prediction computer. Highly touted for its use of sophisticated analytics, it invokes visions of sci-fi movie crime prevention of the future. In actuality, game show host Steve Harvey would be far more appropriate as the presenter of this bungled system.

Its true implementation simply takes a survey of criminals and their statistics while out on bail. A point system based on it is created and voila! Each defendant is assigned a decidedly low-tech score. Low score = get out of jail free; medium score = ankle monitor; high score = jail with no bail. It sounds easy, but it is nothing more than junk science, hidden behind view of both the public and criminal defendants.

In the movie *The Wizard of Oz*, the great and powerful Oz turns out to be neither great nor powerful. New Jersey's bail risk computers are similarly hiding behind a curtain. No one is allowed to inspect the mathematical assumptions or data that was used to build them, or even check the math. Instead, the public is told that the great and powerful Oz, in the guise of the state, has spoken and they are left to trust it.

When deciding whether defendants get out of jail free or not, all we really have are some state officials playing Steve Harvey, asking, "And the survey says?" The computers then decide for us. Frankly, what the survey says is alarming.

The system is telling judges that people who have been arrested and have a history of dangerous behavior are not more likely to commit a new crime or flee. Therefore, they should be released from jail. This includes individuals who have repeatedly burglarized homes, solicited children for sex, fired guns at others, dealt 37 bricks of heroin in a poor neighborhood, threatened to kill police or have stolen money from a Sunday school.

The state of New Jersey must pull the curtain back on the new bail risk prediction computers and expose it for the fatally flawed system it is. The public has a right to know.

About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.



Weighing the stakes between public safety and punishing the poor with state bail reform

by AirTalk® April 18



A man walks by a bail bonds store on October 20, 2011 in Reading, Pennsylvania. Spencer Platt/Getty Images

[Listen to this story 25 min 50 sec](#)

A bill to reform the way the state administers bail bonds making it's way to Sacramento this week.

[As reported](#) by Bay Area News Group, AB 42 would enable people to be released at no cost while waiting for trial. The bill will be heard Tuesday before California's State Assembly Committee on Public Safety. Under the proposed legislation, judges would be able to decide whether individuals would need to be held until their court date.

The bill's author, Rob Bonta (D-Oakland), argues that high bail fees punish those who cannot afford to be released. But opponents say this bail reform may not keep serious offenders away from the public. Is this the right reform for California's bail system?

Guests:

[Rob Bonta](#) (D-Oakland), California assemblyman representing District 18; he authored AB 42

[Eric Siddall](#), Los Angeles County Deputy District Attorney; vice president of the [Association of Los Angeles Deputy District Attorneys](#), a collective bargaining agent representing nearly 1,000 Deputy District Attorneys who work for Los Angeles County

Defining Moment: Will California End Its Money Bail System?

CityWatch / 20 April 2017



CAPITAL & MAIN-A nationwide movement that began 53 years ago to reform the pretrial incarceration and money bail process has finally reached the legislative committees and political bargaining tables in Washington and Sacramento. Reform advocates – including legislators, prosecutors, attorneys, judges and grassroots organizations – contend that the use of a money bail system for pretrial release is unfair to the poor and unsafe for the public.

In 1964, then-U.S. Attorney General Robert Kennedy told the Senate: “Every year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They are not yet proven guilty. They may be no more likely to flee than you or I. But nonetheless, most of them must stay in jail because to be blunt, they cannot afford to pay for their freedom.”

Kennedy’s efforts helped pass the Criminal Justice Act of 1964 and the Bail Reform Act of 1966, which created a presumption of release before trial for most federal defendants, and mostly did away with the money bail system in federal proceedings. But not for local and state jurisdictions, which account for most of the country’s jail population and in which the money-bail system still controls the release of defendants, dangerous or not. Only two countries, the U.S. and the Philippines, currently use the money bail system, according to California legislators.

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According to a [report](#) issued by the Public Policy Institute of California (PPIC), more than 62 percent of county jail inmates are awaiting trials or sentencing, translating into about 46,000 Californians on a daily basis, say Hertzberg and Bonta. Most remain in jail because they can’t afford bail.

“The current cash bail system is the modern equivalent of a debtor’s prison — it criminalizes poverty, pure and simple,” Hertzberg told a December news conference when he and Bonta introduced their legislation.

“In many cases,” added Bonta, “if you have enough money to pay your bail, you can get out of jail regardless of whether you are a danger to the public or a flight risk. But if you’re poor and not a flight risk or a danger to the public, you are forced to stay in jail, even when the charge is a misdemeanor. That’s not justice.”

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Instead of relying exclusively on a money bail system that forces people to pay nonrefundable deposits to private companies, Bonta and Hertzberg are seeking a system that follows the lead of the federal government, the District of Columbia's local courts and a number of other states that have already reformed their systems.

Those systems rely mainly on pretrial services and assessment examinations to cut down on the pretrial jail population, thereby saving tax money, increasing rates of court appearances by detainees who have been bailed out and protecting the public by refusing bail to inmates deemed a danger to society or a flight risk, no matter how much money they have.

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There's been no study done in LA County regarding how many inmates remain in its jail system because they are too poor to post a money bail, said sheriff's spokeswoman Nicole Nishida.

Based on the experience of other locales, Bonta said, he's learned that most nonviolent offenders will show up for their court appearances and not commit additional crimes after they've been released from jail without posting a money bond. "I also learned that over 50 percent of the jail cells were being taken up by people who couldn't pay bail," Bonta said, noting that the current money bail system is "clearly discriminatory against the poor and people of color."

In addition to a mandatory pretrial risk assessment examination, Bonta told [*Capital & Main*](#), he's also open to using ankle monitoring systems and even small bail amounts — for example, \$100 — as a very last resort.

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Clayton acknowledged that there were problems related to the top 10 percent of bonds issued to defendants who could be dangerous or flight risks, and to the bottom 10 percent of indigent defendants.

He said that the industry would be open to working with legislatures to fix those problems, especially regarding misdemeanor defendants.

Clayton also said there were discussions underway with Hertzberg and Bonta’s offices on their proposed bills and that he felt confident that a “viable compromise,” which would maintain the money bail process in California, could be worked out.

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“Some conservatives and libertarians have shown interest because reform will save tax money and the bill is flexible on how states can handle the reform process,” Lieu said. “Kentucky is a very red state and yet they have instituted reform measures in their bail system.”

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Washington, DC’s local courts have the most experience using a pretrial release system that is based on inmate assessments rather than money bail. Cliff Keenan is the director of DC’s Pretrial Services Agency, a federally funded, independent entity within the Court Services and Offender Supervision Agency charged with formulating release recommendations and providing supervision and services to defendants awaiting trial. His office handles some 22,000 cases a year, including 4,000 felonies and 17,000 misdemeanors.

Keenan told *Capital & Main* that the District stopped using any money as a condition of pretrial release in 1992, when a new Bail Reform Act mandated that defendants would receive a hearing with 24 hours of their detention to determine their release status. The act’s reforms have also enabled judges to hold defendants without bail, Keenan said, “if they were determined to be a flight risk or a danger to the community or to witnesses in their case.”

While there have been failures, Keenan pointed to his office’s [latest published figures](#) showing that “91 percent of released defendants remained arrest-free while their cases were adjudicated; 98 percent of released defendants were not rearrested for a crime of violence while in the community pending trial; 90 percent of released defendants made all scheduled court appearances and 88 percent of released defendants remained on release at the conclusion of their pretrial status.”

New Jersey, the most recent state to reform its former money bail release system, began its new system in January. Elie Honig, New Jersey’s Director of the Division of Criminal Justice, told *Capital & Main* the bail reform process began in 2014 and first required a vote to change the state’s constitution so that dangerous criminals charged with non-capital crimes could be held without bail after their arrest.

“The reforms have focused more of our attention on dangerous cases – and in those cases prosecutors are fighting hard for detention without bail,” Honig said. The first report on the impact of the state’s reforms is due by the end of June.

New Jersey’s new system uses a computerized Public Safety Assessment (PSA), six-point tool to quickly issue a score for each defendant based on various risk factors, including the seriousness of the alleged crime, and the defendant’s criminal and court history. The PSA tool, Honig said, was not the endpoint but a starting line for determining whether a defendant could be safely released. The state’s pretrial services agency is then charged with providing a full assessment of a defendant’s risk for release before a judge determines the final outcome.

The new law also mandates a speedy trial system for defendants, Honig continued, requiring that a detained defendant must be arraigned within 90 days of his or her arrest and the case brought to trial within 180 days.

Neither LA County District Attorney Jackie Lacey nor the U.S. Attorney’s office in Los Angeles would comment on any of the pending bail reform legislation offered by

Lieu, Hertzberg or Bonta. Los Angeles County Sheriff's spokeswoman Nicole Nishida told *Capital & Main* it was "too early [for the sheriff] to comment on this [California legislation] since the language is still being finalized by Senator Hertzberg and Assemblyman Bonta."

So far, law enforcement opposition includes the Association for Deputy District Attorneys, the Riverside Sheriffs' Association several uniformed-officer unions.

"I don't expect Lieu's legislation to go anywhere," said the American Bail Coalition's Jeff Clayton. "States make more money off [taxing] the bail bond industry than they would lose in JAG grants, so I don't think you can coerce them into making reforms." Besides, he said, "Cash bonds are tools that judges can use to insure that justice is done. You want to give judges more tools, not take them away."

Despite a Republican-controlled House and Senate, and the election of Donald Trump as president and a Justice Department now overseen by a hardline conservative, former Alabama U.S. Senator Jeff Sessions, Congressman Lieu remains optimistic about his bill's prospects. If a money bail system was patently discriminatory against the poor and people of color, Lieu noted that there are more than 450,000 people nationwide now sitting in jail — many if not most of whom are there just because they can't afford to post bail. "America's criminal justice system isn't just broken," Lieu said, "it violates our nation's core values."

*(Jim Crogan is a writer for **Capital & Main**, where this piece was first posted.)*
Prepped for CityWatch by Linda Abrams.

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Defining moment: Will California end its money bail system?

A nationwide movement that began 53 years ago has finally reached Washington

JIM CROGAN, CAPITAL & MAIN

Topics: California, capital and main, Incarceration, Prison, Robert Kennedy, Washington, Politics News, Social News, Business News, Life News



(Credit: Reuters/Joshua Lott)

*This article originally appeared on **Capital & Main**.*

A nationwide movement that began 53 years ago to reform the pretrial incarceration and money bail process has finally reached the legislative committees and political bargaining tables in Washington and Sacramento. Reform advocates – including legislators, prosecutors, attorneys, judges and grassroots organizations – contend that the use of a money bail system for pretrial release is unfair to the poor and unsafe for the public.

In 1964, then-U.S. Attorney General Robert Kennedy told the Senate: “Every year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They

are not yet proven guilty. They may be no more likely to flee than you or I. But nonetheless, most of them must stay in jail because to be blunt, they cannot afford to pay for their freedom.”

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POLITICS™

Defining moment: Will California end its money bail system?

By Wyatt Cooper
Posted on 16 hours ago
30 min read

This article originally appeared on Capital & Main.



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“My bail was \$165,000 initially and through the arraignment my bail got to be down to \$85,000,” he said. “And that’s after I had hundreds of letters of support from people in my community saying I was a decent human being...but still inside the courtroom the district attorney said it seems like he’s a threat to society and the judge went with that.”

Walker was released, he said, when his mother, a retired U.S. Postal Service worker, came up with the 10 percent he needed to pay a bail agent.

A choked-up Walker, who was there with his young son, said he recognized he would have had to stay in jail. “If my mother had not stepped up and taken money out of her retirement account ... [she did] that so I could be there to support my family.”

When Walker eventually went to his pretrial proceeding, he said, the charges against him were dropped. But his mother lost the money she had to give a bail agent to get him out of lockup.

Walker said he appreciated the support that he got from his family and the community, but that he knew that many poor detainees don't have that support and he wanted to publicly thank the politicians who are trying to change the current bail system.

Bonta and Hertzberg are heading a coalition of support that includes Lt. Governor Gavin Newsom, the American Civil Liberties Union, Californians for Safety and Justice, the Ella Baker Center for Human Rights, the Essie Justice Group, Western Center on Law and Poverty, Service Employees Union International, California, and others.

Instead of relying exclusively on a money bail system that forces people to pay nonrefundable deposits to private companies, Bonta and Hertzberg are seeking a system that follows the lead of the federal government, the District of Columbia's local courts and a number of other states that have already reformed their systems.

Those systems rely mainly on pretrial services and assessment examinations to cut down on the pretrial jail population, thereby saving tax money, increasing rates of court appearances by detainees who have been bailed out and protecting the public by refusing bail to inmates deemed a danger to society or a flight risk, no matter how much money they have.

Assemblyman Richard Bloom (D-Santa Monica) a coauthor of AB 42, said at the December news conference that research has shown that "prisoners held two or three days are 22 percent more likely to fail to come to court."

The proposed legislation, as currently written, will require counties to set up a "pretrial services agency that would be responsible for gathering information about newly arrested persons, conducting pretrial risk assessments, preparing individually tailored recommendations to the court and providing pretrial services and supervision to persons on pretrial release." It also:

- Provides for the use of "unsecured appearance bonds," by which defendants agree to pay a specific amount if he or she fails to appear in court.
- Gives reminders to defendants about upcoming court dates, and helps with transportation, if needed. Money bail options are included in these bills, provided the bail is the "least restrictive necessary to assure the appearance" in court, and the court must conduct an inquiry to determine the defendant's ability to pay the bail.

- Enables prosecutors to file a motion for pretrial detention and precludes people from being eligible for pretrial release if they are charged with a capital crime, a felony involving violence or sexual assault, or if the person's release would likely result in harm to others, or if the person had threatened harm to others.

Hertzberg's bill passed through the Senate Public Safety Committee by a 5 to 1 vote in early April and is headed to the Senate Appropriations Committee. Bonta's version of the bill receives a hearing Tuesday in the State Assembly's Committee on Public Safety.

The cost to house California inmates averages about \$114 per day, according to the PPIC. In Los Angeles the average cost for Fiscal Year 2015-2016 was slightly more than \$178 per day, according to the Los Angeles County Sheriff's Department, which reports that about \$797 million – or 24 percent of the department's total budget – goes to operate the county's jail system.

There's been no study done in L.A. County regarding how many inmates remain in its jail system because they are too poor to post a money bail, said sheriff's spokeswoman Nicole Nishida.

Based on the experience of other locales, Bonta said, he's learned that most nonviolent offenders will show up for their court appearances and not commit additional crimes after they've been released from jail without posting a money bond. "I also learned that over 50 percent of the jail cells were being taken up by people who couldn't pay bail," Bonta said, noting that the current money bail system is "clearly discriminatory against the poor and people of color."

In addition to a mandatory pretrial risk assessment examination, Bonta told Capital & Main, he's also open to using ankle monitoring systems and even small bail amounts — for example, \$100 — as a very last resort.

Beth Chapman, the wife and business partner of the reality TV bounty hunter, Duane "Dog" Chapman, has testified before a federal Court of Appeals panel that "People are not in jail because they're poor. They are trying to paint a picture that all poor people are languishing in jail, and it just isn't true." She has also appeared in Breitbart News interviews on the subject of bail reform, which the right-wing site has connected to plots allegedly hatched by billionaire George Soros and others.

Capital & Main's repeated phone calls for comment to the Professional Bail Agents of the United States, a trade group Beth Chapman heads, were not returned. The organization's website, though, warns in red letters that "The bail industry is under attack!" Capital & Main's calls to another bail-bonds trade organization, the California Bail Agents Association, were also not returned.

Jeff Clayton is the executive director of the Lakewood, Colorado-based American Bail Coalition, a 10-year-old trade association representing insurance underwriters of bail bonds across the country. In California, he said, all bail bonds must be underwritten by an insurance company.

Clayton told Capital & Main that nationwide, the bail bond industry is a multibillion dollar business and that lobbying efforts against the California and House versions of bail reform are in full swing. He insisted the vast majority of bonds issued help guarantee that defendants would show up for court.

Clayton acknowledged that there were problems related to the top 10 percent of bonds issued to defendants who could be dangerous or flight risks, and to the bottom 10 percent of indigent defendants.

He said that the industry would be open to working with legislatures to fix those problems, especially regarding misdemeanor defendants.

Clayton also said there were discussions underway with Hertzberg and Bonta's offices on their proposed bills and that he felt confident that a "viable compromise," which would maintain the money bail process in California, could be worked out.

Ted Lieu's previous No Money Bail Act died in the House last year. His 2017 version is short and straightforward. It would prohibit the payment of money as a condition of pretrial release in any federal case. (Federal judges can still order property bonds as a condition of release.) It would also amend the Omnibus Crime Control and Safe Streets Act of 1968 to make any state that did not reform its bail system within three years of passage and signing of this law, ineligible for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program.

In Fiscal Year 2016 California received more than \$28.9 million in JAG awards, with more than \$10.7 million going to counties and cities, and more than \$18.2 million going to the California Board of State and Community Corrections, according to Lieu's office.

"Some conservatives and libertarians have shown interest because reform will save tax money and the bill is flexible on how states can handle the reform process," Lieu said. "Kentucky is a very red state and yet they have instituted reform measures in their bail system."

The U.S. Justice Department, under former President Barack Obama and Attorney General Eric Holder, also weighed into the debate over bail reform, filing friend-of-the-court briefs in several cases in Georgia and Alabama in 2015 and 2016 — calling money bail systems that continue to jail defendants because they are poor unconstitutional. Civil rights division attorneys filed court papers

stating categorically that “bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violate the Fourteenth Amendment.” Justice Department attorneys also stated, “Fixed bail schedules that allow for the pretrial release of only those who can pay, without accounting for the ability to pay unlawfully discriminate based on indigence.”

Washington, DC’s local courts have the most experience using a pretrial release system that is based on inmate assessments rather than money bail. Cliff Keenan is the director of DC’s Pretrial Services Agency, a federally funded, independent entity within the Court Services and Offender Supervision Agency charged with formulating release recommendations and providing supervision and services to defendants awaiting trial. His office handles some 22,000 cases a year, including 4,000 felonies and 17,000 misdemeanors.

Keenan told Capital & Main that the District stopped using any money as a condition of pretrial release in 1992, when a new Bail Reform Act mandated that defendants would receive a hearing with 24 hours of their detention to determine their release status. The act’s reforms have also enabled judges to hold defendants without bail, Keenan said, “if they were determined to be a flight risk or a danger to the community or to witnesses in their case.”

While there have been failures, Keenan pointed to his office’s latest published figures showing that “91 percent of released defendants remained arrest-free while their cases were adjudicated; 98 percent of released defendants were not rearrested for a crime of violence while in the community pending trial; 90 percent of released defendants made all scheduled court appearances and 88 percent of released defendants remained on release at the conclusion of their pretrial status.”

New Jersey, the most recent state to reform its former money bail release system, began its new system in January. Elie Honig, New Jersey’s Director of the Division of Criminal Justice, told Capital & Main the bail reform process began in 2014 and first required a vote to change the state’s constitution so that dangerous criminals charged with non-capital crimes could be held without bail after their arrest.

“The reforms have focused more of our attention on dangerous cases – and in those cases prosecutors are fighting hard for detention without bail,” Honig said. The first report on the impact of the state’s reforms is due by the end of June.

New Jersey’s new system uses a computerized Public Safety Assessment (PSA), six-point tool to quickly issue a score for each defendant based on various risk factors, including the seriousness of the alleged crime, and the defendant’s criminal and court history. The PSA tool, Honig said, was not the endpoint but a starting line for determining whether a defendant could be safely released. The

state's pretrial services agency is then charged with providing a full assessment of a defendant's risk for release before a judge determines the final outcome.

The new law also mandates a speedy trial system for defendants, Honig continued, requiring that a detained defendant must be arraigned within 90 days of his or her arrest and the case brought to trial within 180 days.

Neither L.A. County District Attorney Jackie Lacey nor the U.S. Attorney's office in Los Angeles would comment on any of the pending bail reform legislation offered by Lieu, Hertzberg or Bonta. Los Angeles County Sheriff's spokeswoman Nicole Nishida told Capital & Main it was "too early [for the sheriff] to comment on this [California legislation] since the language is still being finalized by Senator Hertzberg and Assemblyman Bonta."

So far, law enforcement opposition includes the Association for Deputy District Attorneys, the Riverside Sheriffs' Association several uniformed-officer unions.

"I don't expect Lieu's legislation to go anywhere," said the American Bail Coalition's Jeff Clayton. "States make more money off [taxing] the bail bond industry than they would lose in JAG grants, so I don't think you can coerce them into making reforms." Besides, he said, "Cash bonds are tools that judges can use to insure that justice is done. You want to give judges more tools, not take them away."

Despite a Republican-controlled House and Senate, and the election of Donald Trump as president and a Justice Department now overseen by a hardline conservative, former Alabama U.S. Senator Jeff Sessions, Congressman Lieu remains optimistic about his bill's prospects.

Echoing Bonta and Hertzberg's assertions that a money bail system was patently discriminatory against the poor and people of color, Lieu noted that there are more than 450,000 people nationwide now sitting in jail — many if not most of whom are there just because they can't afford to post bail. "America's criminal justice system isn't just broken," Lieu said, "it violates our nation's core values."

CALIFORNIA★POLITICAL REVIEW

A Rush to Judgment Poses a Public Safety Threat

April 20, 2017 By Stephen Frank

I love to watch lots of detective stories on TV –if there is a Law & Order or NCIS I have not seen, I will, in the middle of the night. Now I am watching CSI: Miami—a show I did not watch when it was an original. There is always a scene where a criminal is arrested and they turn to the cop and say, “I will be out on bail before you finish the paper work.” Looks like life is going to follow fiction in California.

“Senate Bill 10 and AB 42 change the bail system drastically. These two bills allow defendants, including those accused of capital crimes that carry the death sentence, to remain free pending their trial if they meet certain criteria. Further, when considering bail, the legislation gives scant weight to the criminal history of an arrestee or the arrestees’ prior history of failing to appear in court. The fact that our state constitution prohibits the release of those accused of capital crimes makes no difference to the authors of this legislation. The fact that our state constitution mandates that public safety be the primary factor in weighing pretrial release is ignored by these bills.”

AB 109 put 50,000 criminals from prison back on the streets. Prop. 47 made many felonies into ticketed offenses. Prop. 57 made the rape of a drunk woman a non-violent crime. Now the Left is making sure that even murderers can be back on the street before the paper work is done. Feel safe?



Photo credit: Michael Coghlan via Flickr

A Rush to Judgment Poses a Public Safety Threat

By Eric Siddal, Association of Los Angeles Deputy District Attorneys, 4/18/17

If you need any further proof that state legislators do not value public safety, consider [Senate Bill 10](#) (SB 10) and [Assembly Bill 41](#) (AB 41) which will change our current bail system. Make no mistake, there is a problem with our current bail system. There is no question that it is unfair to the poor. Nor does it make sense that bail for violent criminals serves any public interest. But these two pieces of legislation are not the solution.

Senate Bill 10 and AB 42 change the bail system drastically. These two bills allow defendants, including those accused of capital crimes that carry the death sentence, to remain free pending their trial if they meet certain criteria. Further, when considering bail, the legislation gives scant weight to the criminal history of an arrestee or the arrestees' prior history of failing to appear in court. The fact that our state constitution prohibits the release of those accused of capital crimes makes no difference to the authors of this legislation. The fact that our state constitution mandates that public safety be the primary factor in weighing pretrial release is ignored by these bills.

The authors of SB 10 claim they are following the federal model. The federal system does not use bail. This part they follow. But in the federal system, if you are a danger to the public, you are not released. You are held without bail. So, what does Sacramento do? True to form, they chop up the federal system and keep the worst while removing the best.

There are other flaws that challenge common sense. Under our current bail system, public safety, the criminal record, and the history of failures to appear are central. Instead, these bills instruct a court not to give undue weight to factors such as criminal history..." and "distinguish between failure to appear and willful failure to appear." Yes, you read that correctly: the lengthy criminal history of a defendant is now given scant consideration, and if there are past failures to appear it will now have to be shown that was a deliberate decision-an impossible and impractical standard.

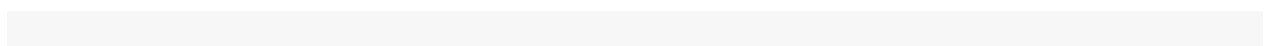
Probably the most laughable part of SB10 is the requirement of the individual counties to set up services for defendants to make sure they come to court at their appointed time. Does this mean wake-up calls and room service for our defendants and will a failure to answer the phone call reminding "John the criminal to show up to court" be considered "willful?"

What about the victim? What does the victim get? They get nothing. They get no peace of mind that the person who attacked them is safely away. Instead, they get to go to bed knowing that the person who harmed them is still free. They get to ride the courthouse elevators with the person who raped them. What does Sacramento think is going to happen with cooperative witnesses? Do they really think victims are going to want to come to court when they know the state has turned their back on them? Why should anyone report a crime when our own government re-victimizes the victim and protects the predator?

The question law enforcement needs to start asking is how does the public expect us to ensure its safety when politicians continue to do everything to undermine this goal. Not only have they released convicted felons in the tens of thousands, they now seek to ensure violent defendants remain free to roam the streets while awaiting trial. A recent [Los Angeles Times story](#) examined the drastic fall in arrests rates in California while the crime rate has risen and quoted politicians wondering why this was happening. Should this legislation pass, it sends another strong signal to law enforcement that they should not even bother with making arrests since the legislature wants defendants to remain free. When will our state politicians stop prioritizing the criminal and start focusing on the victim?

To read previous ADDA blogs regarding the bail system, please see (1) [Does the current bail system penalize the poor?](#) & (2) [The Assault on Safety Continues: Eliminating Bail is the Latest Target](#).

Eric Siddall is Vice President of the Association of Los Angeles Deputy District Attorneys, the collective bargaining agent representing nearly 1,000 Deputy District Attorneys who work for the County of Los Angeles.



Mountain Democrat

News

Will bail end in California?

By Amanda Williams

From page A1 | April 26, 2017

A bill that will potentially end bail in the Golden State has passed in the State Senate and State Assembly Committee on Public Safety.

Rob Bonta (D-Oakland) authored AB 42, also known as California Money Bail Reform Act of 2017. Bonta suggests the current bail system caters to the wealthy and he seeks to “eliminate discrimination against poor Californians,” and its “unfortunate bail process.”

“If you are a risk at failing to appear at your next court hearing or are a threat to the public but have enough money in your pocket, you can post bail and get out of jail,” Bonta said. “But if you’re not a risk at failing to appear at your next hearing and you’re not a risk to the public don’t have enough money in your pocket—you stay in jail. And when you stay in jail the human impacts are enormous.”

Bill AB 42 would give judges the right to keep “potentially dangerous” individuals in jail pending their trial date without the prospect of bail.

A “risk-based” computer system will act as a playbook of sorts for judges to analyze the risk factor of defendants that should be released on their own recognizance and who should stay behind bars.

“The assembly and the senate are working hand in hand to make the justice system more just and to end a practice that has existed far too long in California where we punish poor people simply for being poor. We will also make our public more safe as well,” Bonta said.

The bill mimics a system formulated under the Obama Administration by past Attorney General Eric Holder, currently being used in New Jersey that took effect on Jan 1.

“Early results are showing a marked increase in crime committed by defendants released under the new system,” in New Jersey, according to the American Bail Coalition.

Jeffrey Clayton, executive director of the American Bail Coalition, a nonprofit organization, opposes the bill and is “committed to developing the most efficient means for the pre-trial release of criminal defendants by reducing the financial impact on state government and taxpayers, while maximizing public safety.”

He said the risk assessment will be applied to all types of crimes.

“There are also problems with criminal history information and whether it’s accurate. If the computer says the crime is considered low-level even if it’s a serious crime, the judge is going to have a hard time,” said Clayton, citing that only 21 states report 60 percent of all convictions.

“The bill would require every county in California to create an umbrella of pre-trial supervision and evaluate every defendant that comes through the system using the risk assessment and make a recommendation to the judge for the hearing. There would be no bail schedules,” said Clayton.

Under the bill, state agencies would be created to oversee the work of local county agencies, Clayton said. The cost would fall on the state and potentially the tax payer.

“Every ankle monitor and GPS unit under the bill would be paid for by the state, including providing transportation and assistance to defendants, whether you are indigent or not,” Clayton said.

Senate Bill 10 passed the senate committee, and Assembly Bill 42 passed as well and are identical, said Clayton.

Either one of the bill’s will have to go through a plethora of steps to actually pass, including being heard in front of the appropriations committee either in the assembly or the senate, which Clayton said will take a month or so and a process called “suspense” when a bill has costs attached. If the bill is funded, it will go to the floor of that specific house.

“They should just run one bill, but they are doing that as a show of solidarity between the houses in the legislature,” Clayton said. “It has got a long way to go.”

Clayton predicts if the bill is voted in would take effect Jan. 1, 2018.

Local bail bondsmen would feel the impact if the bill passes, putting some of them, if not the majority, out of business.

“It’s a train wreck just leaving the station,” said Gold Country Bail owner Chuck Holland.

“Because of how the bill is written, it will probably gut most of the bail businesses by about 85-90 percent. It will have a devastating effect,” he said. “My feet are firmly planted on the ground, I will be fine either way.”

The bill, Holland said, will have an “extreme burden” on the tax payer, potentially costing in the millions to initiate the program.

“Somebody has to pay for it, it can’t be done for free. Ironically how it is now, the bail system is 100 percent free to the tax payer, zero cost,” he said. “It doesn’t really help anybody. In the long run it’s going to violate constitutional rights to fair and reasonable bail. They want to get everybody that goes to jail and hold them for up to 48 hours while they make a decision on what to do with them on the new pretrial release program.”

Sheriff John D’Agostini declined to comment on the topic.



Cash Bail, a Cornerstone of the Criminal-Justice System, Is Under Threat



© Alyssa Schukar for The Wall Street Journal

More U.S. cities and states are reducing their reliance on cash bail, rejecting the longstanding notion that money should determine whether arrested individuals are locked up until trial.

The movement is upending a cornerstone of the American criminal-justice system and threatening to deal the most severe blow to the multibillion-dollar bail-bonds industry since it began in the late 1800s.

In an overhaul that went into effect this year, New Jersey began a new statewide bail system that essentially eliminates cash bail, compelling judges to detain—or release—defendants before trial based on their risk to public safety, rather than their ability to pay. Voters in New Mexico passed a similar amendment to the state constitution late last year.

In California and Texas, the two states where courts have historically set the highest bail amounts, lawmakers have introduced bills that would significantly change their bail systems. Starting July 1, judges in Maryland will have to consider alternatives to cash bail for nonviolent defendants.

Driving the overhaul efforts is a growing recognition by judges and others that the current system unfairly incarcerates people solely because they can't afford bail amounts as low as \$100, creating overcrowded jails at great cost to taxpayers. Others contend changing the system will improve public safety by preventing those charged with violent crimes who have access to cash from paying their way out.

Momentum for change is coming from both sides of the political aisle. Critics of cash bail range from former Democratic Attorney General Eric Holder to Republican New Jersey Gov. Chris Christie.

In addition, nearly two dozen lawsuits have challenged the constitutionality of setting cash bail without considering an individual's ability to pay it, leading to new procedures in several places. Last month, a federal judge in Houston ordered Harris County, Texas, to stop detaining misdemeanor arrestees if they can't afford bail, finding the practice violated the Constitution's equal-protection rights against wealth-based discrimination. An appellate court is expected to review the case.

The private bail-bonds industry is resisting the push, arguing that a money deposit is still the best way to ensure a defendant's appearance in court.

Since at least 1835, judges in the U.S. have required arrested individuals to put down money, also known as a bail or bond, as an incentive to appear in court. Defendants who can pay are released, while those who can't remain in jail until trial or until they plead guilty. In most instances, the money is refunded after the cases are resolved, if the defendant makes every court appearance.

Judges typically set bail based on the severity of the charged offense, although bail practices vary widely by state and even by county. Many county judges still use bail schedules, which set dollar values for specific crimes, such as, in San Francisco, \$5,000 for driving with an invalid license.

In most states, those who can't make bail can hire a private bail bondsman, who will charge the defendant a nonrefundable fee in exchange for posting bail.

Nearly 500,000 people are awaiting trial in U.S. jails, most of whom are there because they cannot afford bail, according to the Pretrial Justice Institute, a nonprofit advocacy group. Since 1990, the number of defendants in jail awaiting trial has more than

doubled, accounting for nearly 80% of the increase in the U.S. jail population, according to the most recent statistics from the Justice Department. Jails, unlike prisons, hold people awaiting trial or serving short sentences after conviction.

Whether an accused individual should be deprived of his or her freedom before trial is one of the most important decisions in the criminal-justice system, judges said in interviews. One study showed that people who spend even three days in pretrial detention are more likely to plead guilty, lose their jobs, detach from their families and commit crimes in the future.

“If we are keeping in jail people on the basis of the accident of their wallet rather than on the basis of the risk they pose, that’s just complete irrational folly for us to do that as criminal-justice policy,” said Truman Morrison, a senior judge on the D.C. Superior court.

Those who argue the current cash-bail system allows dangerous criminals with access to money to roam free before trial point to defendants like 26-year-old Pierre Stokes of Chicago.

In June 2015, Mr. Stokes paid \$9,000 to gain release from Cook County jail after he was arrested on a gun charge and aggravated assault. Less than a year later, while out on bail, he shot three people, police say. He is back in jail without the option of bailing out and has pleaded not guilty to the charges. In an interview in the jail’s maximum-security ward, he said he has been wrongly accused.

“We continue to see violent offenders returning to the very streets they came from,” said Cara Smith, chief policy officer for Cook County Sheriff Thomas Dart. His office is proposing legislation that would expand the circumstances under which prosecutors can detain someone without bail, including a wider range of gun offenses. The bill unanimously passed in the Illinois senate on May 5 and is being debated in the house.

Other bail critics contend the system leaves too many poor, nondangerous defendants spending long stretches in jail without any finding of guilt or innocence.

Johnnie Smith, 41, who police say had no history of violence and a below-average IQ, spent 534 days in Cook County jail because he couldn’t afford to pay a \$100 bond after stealing a television from a friend’s house. He pleaded guilty and served just 13 more days because of his long stretch of pretrial detention.

Instead of using cash bail, many jurisdictions are now releasing low-level offenders and using phone calls to remind them of court appearances. For higher-risk defendants, courts often use electronic monitoring, including ankle bracelets, and require in-person check-ins.

Advocates of reducing the use of money bail point to practices in Washington, D.C., and in federal courts as possible models.

The District of Columbia in 1992 became the first jurisdiction in the U.S. to eliminate cash bail. Last year, almost 95% of individuals arrested there were released without posting money, while the others were detained after being deemed a high risk to public safety. Among the released individuals, 88% made every court appearance, and 89% weren't rearrested during their release, according to the D.C. Pretrial Services Agency, which supervises defendants awaiting trial. Only 1% of those released were rearrested for a violent crime.

Federal courts hardly ever use cash bail. Under the federal system, defendants can be detained without bail if the government provides evidence the individual poses a flight risk. Judges can set conditions of release, such as requiring the defendant's family members to cosign a bond, often backed by property, in which they would forfeit their assets if the defendant fails to appear in court.

Researchers have estimated that jailing someone frequently costs taxpayers between \$80 and \$150 a day, while monitoring a defendant released pretrial costs between \$5 and \$15 a day. The Pretrial Justice Institute estimates the U.S. spends at least \$14 billion a year on pretrial incarceration.

Mecklenburg County, N.C., had planned to raise \$240 million in 2009 to fund a new jail, but the jail population fell so much after the county began changing its bail practices that year the new facility no longer was needed.

Some sheriffs have raised concerns that eliminating cash bail will reduce public revenue. In Illinois, which doesn't allow private bail bondsmen, county governments retain 10% of every bond paid even if a bond is refunded or charges are dropped.

Brian McFadden, a county administrator for Sangamon County, Ill., said funds from bail payments contribute \$200,000 to the county budget. Defendants who use the jail and court system should share the cost burden, and paying bail is a way for them to have "some skin in the game," Mr. McFadden said. The county, he said, has begun releasing nonviolent suspects without bail, under supervision.

Opponents of overhauling bail say detaining defendants solely based on their risk to public safety is unrealistic. Judges won't have adequate time or evidence to determine whether an individual poses a flight risk, they say, increasing the likelihood that too many people will be released.

New Jersey's new pretrial system allows judges to decide whether a defendant should be released based on a score calculated from the defendant's criminal history and other factors. Critics have protested some recent release decisions, saying the scoring system overlooks factors such as the defendant's juvenile criminal history.

Christopher Wilson, a 20-year-old registered sex offender who was arrested in January for allegedly soliciting sexual favors from an 11-year-old, had been released by a state judge after receiving a low score under New Jersey's new bail system. After local prosecutors appealed the decision, the judge in March ordered Mr. Wilson detained until trial. He has pleaded not guilty.

Mr. Wilson's case became part of New Jersey's bail debate. Advocates of overhauling bail say his return to jail shows the process gives judges the flexibility to change their release decisions. Bail-bonds industry lobbyists say the case shows the new system is causing local residents to fear for their safety.

Jeffrey Clayton, executive director of the American Bail Coalition, a trade association for insurance companies that underwrite bail bonds, said it would be a "make-or-break year" for cash bail. Earlier this year, he traveled to six state capitals—in California, Nevada, Connecticut, New York, Colorado and Texas—in 11 days to try to stop overhaul efforts.

He said he is hopeful the Trump administration will slow momentum for changing bail procedures, including by cutting back on Justice Department grants that help jurisdictions experimenting with new bail systems.

A spokesman for the Justice Department declined to comment.

Bail agents are pouring money into lobbying. Since 2011, bail-bonds companies and insurers have donated more than \$288,000 to the campaigns of Maryland state legislators, including the chairman of the Senate Judicial Proceedings Committee. The state senate recently passed a bill undercutting a court rule that sought to eliminate cash bail in Maryland.

Kirk Shaw, a bail bondsman in Hackensack, N.J., said business is the worst it has been since he joined the industry in 1980. He has gone from six full-time staffers last year to two part-timers this year.

"We have very little business at all," he said. "No one is coming in."

Write to Nicole Hong at nicole.hong@wsj.com and Shibani Mahtani at shibani.mahtani@wsj.com

Sacramento lawmakers want to blow up California's bail system

Posted by Eric Siddall | Jun 1, 2017



Improvements are needed on California's bail system

We need to improve the way bail is administered in our state. However, any change to our bail system must prioritize public safety and make sure that people return for their court dates. Senate Bill 10 and Assembly Bill 42 fail on both counts. They would effectively eliminate, or severely limit, pretrial detention for everyone, including potentially releasing those being charged with murder, rape and child molestation. The bill, written by the American Civil Liberties Union, gives little comfort to crime victims, witnesses and law enforcement.

Our system is not perfect, it needs improvement, but, on the vast majority of cases, defendants are given the resources and protections to guarantee a fair trial. Currently, defendants charged with crimes have several safety valves.

First, our judges set bail according to the crime and the defendants' criminal record.

Second, we provide exceptional staffing to our public defender offices, including a legion of investigators.

Third, our sheriff will not keep individuals in custody unless their bail is more than \$25,000.

Fourth, for lower level crime, defendants are automatically released without posting bail.

Fifth, defendants, once bail is set, can request a bailing hearing where they can provide reasons why bail should be reduced.

The authors of SB 10, introduced by Democratic state Sen. Bob Hertzberg of Van Nuys, and AB 42, introduced by Democratic Assemblyman Rob Bonta of Oakland want to blow-up the existing system. Rather than relying upon defense attorneys making their arguments as to why bail should be lowered on a case-by-case basis, they create a new agency at the cost of anywhere between \$2.5 billion to \$3.5 billion. These new agencies are expected to generate reports within 48 hours of arrest (with the exception of violent felons, which will have a longer period) to determine whether a defendant is a flight or public safety risk. This timetable is unrealistic considering that it already takes probation two weeks to generate a report on a known violation. Now, we are expecting this new agency to compose a risk assessment report within the first 48 hours of arrest?

However, more troubling is how this new agency is supposed to decide who needs to post bail. They are prohibited to "give undue weight to factors such as criminal history." Furthermore, "it shall distinguish between failure to appear and willful failure to appear." This eliminates the two most important tools at our disposal for determining who should remain in custody.

What replaces the current considerations of public safety and likelihood to appear? Excellent question. The guidelines only give concrete limitations. Entirely missing from the proposed guidelines is a mandate that the agency "shall prioritize public safety" or "ensure the defendant's likelihood to appear."

Nor does the proposed system do away with bail, because even after \$3.5 billion of reports a person can still post bail. How does this address the inequity of the wealthy person posting bail and escaping the consequences of being convicted? How does this address public safety if the reports indicate he is a danger to the community?

However, what is of great concern is that under the current system a capital murder charge is sufficient to detain the defendant without bail. Under SB 10 and AB 42, we will now need to conduct the equivalent of a civil trial in front of a judge.

The bills require judges to presume the defendant innocent, a right that currently exists during trial, and presume that the defendant should be released. This would require prosecutors to

put on mini-trials before the preliminary hearing and, absurdly, it would require a higher standard of proof than the preliminary hearing.

In one of my recent gang murder cases, the defendant committed murder while he was released pending a residential burglary charge. The judge responsible for his burglary case released him without requiring him to post the scheduled bail of \$50,000. This was within her discretion. Shortly after his pretrial release, he murdered a rival gang member. If the bills pass, this type of scenario would likely occur more often.

Sacramento politicians want to blow up the entire system because they have heard of extremely rare cases of individuals locked up for minor offenses and losing their jobs. No question we need to stop this from happening. It is clearly unfair. But it is equally absurd to strip away victims' rights, diminish the power of judges to hold a person in custody and presume the release of defendants to overcorrect for the inequities on the other end of the spectrum.

Eric Siddall is vice president of the Los Angeles County Association of Deputy District Attorneys. He is also a deputy district attorney in the Hardcore Gang Division. He graduated from Fordham University School of Law in 2000.



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Bail Keeps Criminals Away From the Rest of Us



(Lori Martin/Dreamstime)



By **Michael Shannon**

Wednesday, 07 Jun 2017

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Social justice might warrant a more positive reception among the general populace if it wasn't such a moving target. Why sign up for societal upheaval and condescending advice from your betters when the country has no chance of reaching the promised land?

The campaign for "bail reform" is a perfect example. That's because bail used to be the reform.

Prior to the advent of bail, suspects were held until their trial date. Release after posting bail was seen as a "progressive" reform to the system that kept the innocent and guilty in the hoosegow awaiting trial.

That may have been fine for the last century, but now enlightened thinkers consider being poor a pre-existing condition like cancer. And just as not bothering to sign up for insurance before landing in the emergency room shouldn't subject one to financial penalties, not bothering to obey the law and landing in jail should be a cost-free experience too.

Social justice warriors agitating for bail reform disparagingly refer to bail as being "money-based." This overlooks the intent of bail. The goal is not to gouge victims for extra money, like Ticketmaster convenience fees. The goal is to protect the public. Which in this case means showing up to trial.

Financial bonds may not be perfect, but they certainly beats the House Lannister system of holding family members hostage.

Proponents of get out of jail free base their campaign on the exceptions where the system supposedly didn't function. The Washington Post trotted out Shannan Wise who was held for five days in Baltimore, Md.

She'd been arrested on an assault charge filed by her sister. Wise's original bail was set at \$35,000, but at a subsequent hearing the judge raised the amount to \$100,000 because, based on the allegations, the judge believed Wise was dangerous.

This freedom auction was getting expensive. At the original \$35,000 her bail bond fee would have been \$3,500, or 10 percent, if she didn't have the entire amount. After the second judge was through with her the fee was \$10,000. She scraped up \$1,000 as an installment and was cut loose. Then sis dropped the charges.

Naturally leftists believe this is reason to throw the bailee out with the bath water.

It's important to note two relevant facts. One, the bondsman doesn't set the bail amount. Judges do. Two, even if the "financial bond" system was abolished, Wise still would've spent five days in jail because the judge deemed her dangerous. That's a fact social justice warriors hope you missed.

The American Bail Coalition reports that Jefferson County, Colo. abolished cash bail in 2010 only to discover it spread the misery. Both those who could afford bail and those who couldn't spent more time in stir waiting for their case to be evaluated before release.

Even worse for the public, 42 percent of the Jefferson County felony defendants released on the honor system failed to appear for trial.

Eric Helland and Alexander Tabarrok compared the effectiveness of surety bonds (using bail bondsmen) with alternatives. They found defendants who paid the entire cash bond to the court had a failure to appear rate 18 percent higher than surety bonds. Defendants who only made a down payment on their bond to the court were 33 percent higher, while FTA rates for those released under their own recognizance (the "bail reform" gold standard) were 50 percent higher.

The reformers would have you believe people are being put in jail because they're poor, when the truth is they are in jail because they've been arrested.

Contending bail is unconstitutional because poor people can't afford high bail puts the situation exactly backwards. The amount of bail is in proportion to the seriousness of the crime and the potential danger to the public releasing the accused represents.

It has nothing to do with income; it has everything to do with outcome.

Here's how social justice bail works in practice. On Jan. 1 of this year, New Jersey essentially eliminated bail. Under the new algorithm regime a computer decides who gets released, no biased dead white judges are involved. So far 85 percent are judged to be harmless.

That includes Jules Black. On April 5 he was arrested and charged twice for possessing an illegal handgun and being a convicted felon in possession of a handgun. HAL 2000 decided he was a good risk and cut him loose. On April 9 "no risk" Black murdered Christian Rogers, a father of two.

Being rich shouldn't mean better treatment just as being poor shouldn't mean lenient treatment. Bail isn't for the accused's benefit. Bail is to protect law-abiding citizens from encounters with people who are better off in jail. It isn't a perfect system, but it beats the alternative. Just ask Christian Rogers' mom.

Michael R. Shannon is a commentator, researcher for the League of American Voters, and an award-winning political and advertising consultant with nationwide and international experience. He is author of "Conservative Christian's Guidebook for Living in Secular Times (Now with added humor!)." Read more of Michael Shannon's reports — [Go Here Now](#).

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Have bail reforms made us safer? Two views

AsburyPark Published 5:31 p.m. ET June 15, 2017



A judge reversed his January decision to free Christopher Wilson under New Jersey's new bail-reform system.
RYAN

Bail reforms authorized in a 2014 statewide referendum allowed decisions about releasing those charged with crimes to be based primarily on computerized risk assessments rather than relying on a cash-bail system. Those reforms took effect this year. Jail population is down, but at what cost? Are critics right that dangerous criminals are being improperly set free? We asked Rosenne Scotti of the Drug Policy Alliance and Jeffrey Clayton of the American Bail Coalition for their differing perspectives on the impact of the reforms to date and potential revisions moving forward.

Bail reform was designed to reduce the jail population, and toward that end it does seem to be working. But is that enough to declare the new system a success?

Scotti: That's not totally accurate — bail reform was designed to restore fairness to a broken system and improve public safety. Prior to January 1, decisions about release were only based on an individual's access to money and had nothing to do with their potential risk to public safety. We released a report in 2013 that found that around 40 percent of people in New Jersey jails were there solely because they

could not afford often nominal amounts of money bail. So, a smaller jail population is an indicator of success because it demonstrates that the new system is working and allowing for decisions based on risk rather than wealth.



Jeff Clayton (Photo: Courtesy of Jeff Clayton)

Clayton: I don't believe so. Obviously, if we got rid of all crimes, we would save a lot of money, but that's not the point of the criminal justice system — to save money. I do think on the lower-level crimes, the cite-and-release policies appear to be reducing jail populations.

Do drug-related cases make up the majority of instances in which people are now going free instead of languishing in jail, unable to afford bail?

Scotti: Not necessarily. Data is not available yet, but what we do know is that pretrial release decisions are now based on an individual's risk, not their resources. All eligible defendants are assessed using an evidence-based instrument that determines the defendant's risk of failing to appear in court and risk to public safety if released pretrial. Judges must take the risk analysis into consideration when making a determination about release.

Clayton: We don't have specific statistics, but based on the various news reports we are seeing and what I am hearing on the ground, those getting out of jail free run the gamut of criminal charges from gun charges, to robberies, sex offenses, burglaries, etc. Drug offenders do not appear to make up a majority of these individuals.



Roseanne Scotti (Photo: Courtesy of Roseanne Scotti)

Critics say some dangerous criminals that would otherwise be in jail are being set free, almost immediately after being charged. Is that a legitimate concern?

Scotti: Critics of reform are not being truthful about the current system or the money-based system that was in place prior to Jan. 1. In the old system, dangerous individuals frequently posted bail and were immediately released into the community after being charged. This happened in the infamous 2013 Short Hills case where someone who was released on money bail committed a carjacking and murder four days later. Money bail does nothing to protect public safety. Under bail reform, judges now assess risk and have the ability to detain dangerous individuals while they await trial. That seems like common sense, but it wasn't even possible under the old system.

Clayton: I think so. What appears to be the central problem with the new system is that it was assumed that prosecutors and judges would keep people in jail who were a risk of flight or a danger. They would be held via preventative detention and, in making such a bipolar release-or-no-release decision, such a system would better protect the public. The problem is that two out of five defendants whom prosecutors believe are so dangerous they should get no bail at all are instead being released for free. That is due to the fact that preventative detention is hard to prove and takes significant resources to put together. Under the old system, there certainly would have been significant bails that would serve to either detain such defendants or result in a greater level of accountability and deterrence that releasing for free or using ankle monitors simply does not provide.

It does seem like the new system errs on the side of freedom, and that any increased risk of releasing the wrong person is being deemed worth the tradeoff. Do you think that's a fair characterization?

Scotti: There is no increased risk that the "wrong person" will be released — in fact it's just the opposite. For the first time, judges are now able to evaluate the risk of releasing an individual, instead of simply allowing everyone to buy their freedom. The new system errs on the side of freedom because freedom before trial is a fundamental principle of our American justice system. As Chief Justice William Rehnquist wrote in *U.S. v. Salerno*, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." New Jersey's reform puts this principle into practice and prioritizes fairness and public safety. Individuals should not be detained before a fair trial simply because they are poor.

Clayton: Yes, although I think the central argument on the other side is that these dangerous people would have simply bailed out under the old system. But that is certainly not the case. An unposted bail, under the old system, meant detention. In fact, one published article discussed the attorney general's concern about individuals arrested on gun charges, who are being released for free; 48 percent of them failed to bail out under the old system. Back then, when someone went on a serious crime spree, the amount of their bail would eventually forestall a release from jail. With the new system, it's a question of can the prosecutor get preventative detention? If not, then it's "get out of jail free" on this case ... and the next one...and the next one. If the new system had been implemented in the fashion originally intended, there would have been preventative detention, followed by financial bail and then recognizance release — all with or without supervision or other conditions.



New Jersey Attorney General Christopher Porrino last month issued tougher guidelines for when prosecutors should seek to have defendants jailed under the state's recently reformed bail system. The rules instruct prosecutors to seek detention for defendants accused of serious gun crimes, as well as those with a history as a sex offender or on parole or pre-trial release for another crime. (Photo: AP)

Judges must rely heavily on a computer algorithm to determine risk assessment, taking away much of their discretion. Is that, as supporters say, a more “honest” system?

Scotti: Judges maintain complete discretion under bail reform. While the law requires them to consider the results of an evidence-based risk assessment tool when making a determination about release, it in no way takes away their discretion to detain or release an individual. Risk assessment tools are only tools, and should never replace judicial discretion. But bail reform creates a more honest judicial system because it allows all stakeholders in the courtroom, including judges, defense attorneys and prosecutors, to have a transparent conversation about an individual's risk to public safety and to base that conversation on facts. In the old system, judges often set high bail amounts on people they thought were dangerous in hopes that the individual wouldn't be able to afford the bail and wouldn't be released prior to trial — but often that hope was in vain when the person paid their money bail and walked away. That was not an honest system or a safe system.

Clayton: It is hard to say that considering someone's past crimes, which comprise the bulk of the score under most risk assessments, better protects the presumption of innocence in a given case, compared to assigning bail based on alleged conduct, which is what bail schedules did under the old system. Previously, jail was standardized and generally based on what you were accused of doing. I also think there is way too much faith in the computer algorithms. Criminal history information, which it relies upon, is fairly inaccurate when it comes to discovery of out-of-state criminal convictions. Certainly, the attorney general recently criticized the outcomes in gun cases and cases of eluding the police.

One of the concerns about the new system is the cost. Has that proven true to date? What numbers are out there that can help to quantify the increased burden?

Scotti: While there were some upfront costs associated with implementing the new pretrial system, it's important to recognize the real cost savings that will be realized under the reform. Smaller jail populations mean fewer taxpayer dollars spent on jails. There will be bigger-picture savings down the line as well, including increased court efficiencies and a reduced societal cost of keeping low-risk individuals away from jobs and contributing to our economy.

Clayton: The costs are enormous and undeniable — and the so-called savings are miniscule and speculative. That is why Administrative Judge Glenn Grant recently informed the New Jersey state Legislature that the program, absent an additional and complete overhaul of the funding, will run out of money at the conclusion of next year. In addition, the costs to the counties, law enforcement, and other local officials have been real. This is not to mention an increase in victimization. The biggest problem

with all of this is no one has quantified the overall costs, and the attorney general has said there is no way to know what the price tag will be until after implementation.



Christopher Wilson, 20, a Little Egg Harbor pedophile was sent back to jail in March by the same judge whose order freeing him in January sparked controversy about the state's new bail-reform system. He was to the Ocean County Jail to await trial on charges of attempted sexual assault and child endangerment. (Photo: File photo)

There have been some recent changes in the risk assessment process. What stands out to you about the changes, and do you believe they will help or hurt?

Scotti: Both the Administrative Office of the Courts and the Office of the Attorney General recently made some changes to put more weight on detaining individuals with gun charges and repeat offenses. These were the result of great cooperation and responsiveness among system stakeholders. It is important to remember that bail reform was a complete overhaul of our justice system as we knew it, so it's not unexpected that we will need to make course corrections along the way. I believe these changes will make the system stronger and I'm grateful for the collaboration of key stakeholders.

Clayton: What stands out to me is the fact that the Arnold Foundation tool was validated using over a million files. Everyone was promised it would work because it was based on science. And after all that, the attorney general now thinks it needs to be changed. I do not know how the tool can be changed without rendering it invalid, or at least proving it lacked validity in the first place. If it were changed, it would seem more driven by politics than science. Another issue is that the underlying mathematics and data used to build the tool is not transparent. The public cannot go and inspect the records or perform audits to determine whether the criminal history information upon which the tool was built was either solid or lacked integrity. Finally, even if the tool is changed so as to determine that some people are higher risk, it won't matter. At this moment, prosecutors are unable to detain all of the dangerous individuals and even when they try they only win three out of five.

One of the next tests of the system is whether prosecutors will be able to deliver on provisions requiring trial within 180 days of an indictment. What do you expect to happen?

Scotti: Speedy trial is an important component of bail reform. Our report found that people spent an average of 10 months in jail awaiting trial. People lose jobs, housing and connections to community and family with that kind of time frame. We are confident that the partnership among stakeholders will allow prosecutors to deliver on this part of the reform.

Clayton: It is hard to say at this point. What we do know is that the entire package of reforms is putting so much pressure on law enforcement and prosecutors that these additional requirements are simply going to make it harder for them to do their job in protecting the public. As the New Jersey State Fraternal Order of Police told Attorney General Christopher Porrino recently in a letter, “It is a proven fact that since its enactment law enforcement has encountered a more difficult time in attempting to keep New Jersey’s communities safe.”

So if you could make any change to the system to make it better, what would you do?

Scotti: We are less than six months into implementing these important reforms, and we have very positive, but limited data, thus far. While we are certainly well on our way to a fairer and safer pretrial system, we recognize that restoring justice to our criminal justice system is a long and challenging process, and it’s important to be able to fully analyze the impact of the reforms using facts, not feelings.

Clayton: Implement the will of the voters in passing the changes. That means giving judges and prosecutors the authority to seek the imposition of bail in appropriate cases. Specifically, these would be serious crimes or crimes where defendants are picking up second and third offenses while out on bail. It was never the intent that bail bondsmen be entirely eliminated from the system — but it is exactly what has happened. Of course, everyone knew bail bonding was not going to be as widespread or lucrative based on the reforms, but no one thought all bail bondsmen would lose their businesses six months after the law took effect. Some, certainly, but not all. Introducing some bail back into the system as an option for judges and prosecutors would be the number one thing to bring the system back into balance and implement the will of the voters. The adjustments intended by the law were for offenders on the extremes of the system — those too violent to let out or too low risk and low level to warrant keeping in. It was not designed to eviscerate the entire concept of bail, which should have still existed as an option for judges and prosecutors using their discretion. It appears for the most part the system is working in terms of the low end of the system. But when it comes to violent, repeat and dangerous offenders, the system is failing because having only the tool of preventative detention is proving inadequate to protect the community from repeat violent and sexual predators or to establishing the type of accountability needed in the system.

Roseanne Scotti is New Jersey state director for the Drug Policy Alliance, which advocates for effective drug policies based on science, compassion, health and human rights around the country. The organization was a leading advocate for bail reform in New Jersey.

Jeffrey Clayton is executive director of the American Bail Coalition, a group dedicated to the long-term growth and sustainability of the surety bail industry. He joined the organization as policy director in May 2015. Before that, he served as general counsel for the Professional Bail Agents of Colorado.

P
Philadelphia
M A G A Z I N E

Bar Fight Over the Eagles Key in Latest Push for N.J. Bail Reform

A Cowboys fan jailed in the brawl is fighting the state's shift away from a cash bail system.

By **JOE TRINACRIA** | June 22, 2017 at 2:11 pm



Photo illustration by Joe Trinacria.

The story of the latest fight for bail reform in New Jersey begins in a bar in Sicklerville, where an argument between two Eagles fans and a father-son tandem that cheers for the Dallas Cowboys and Pittsburgh Steelers (don't ask us how) sparked the literal tossing of fists back in April. It was a beat down really, and the Birds fans were unfortunately on the receiving end.

According to NJ.com, Winslow Township police officers arrived at Joe's Tavern on Williamstown Road on the night of April 6 to find a 36-year-old man unconscious and suffering from a head injury in the parking lot. Inside, the son of the bar's owner was treating a broken nose.

The officers were told that a fight broke out following a heated debate over football allegiances between the two injured men and two others who fled. A short while later, 32-year-old Brittan Holland and his father, 56-year-old Christopher Hoffman, were in police custody.

Hoffman, who was reportedly arrested in Steelers slippers, was released after being charged with third-degree assault for his role in the fight. Holland – a self-admitted Cowboys fan – was booked for second-degree assault and ended up at the Camden County Jail.

A new criminal justice system implemented in New Jersey this past January largely replaced the state's previous cash bail policy, empowering judges to decide whether defendants should be held based on a "risk assessment tool" that considers the suspect's charges and their criminal history. Critics of a cash bail system argue that it puts an unfair burden on poor suspects of low-level offenses who are forced to remain behind bars because they can't afford to bail themselves out.

Under this new procedure, a federal class action lawsuit filed on behalf of Holland and a Baltimore bail bonds company states that the plaintiff was denied cash bail and ordered to wear a GPS-tracking ankle bracelet, as well as submit to routine check-ins during the pre-trial process.

The lawsuit, filed earlier in June by Paul Clement, a former U.S. Solicitor General under President George W. Bush, says the restrictions placed on Holland meant that he could no longer go food shopping or take his son to baseball practice.

"Given [Holland's] ties to the community and lack of a criminal record, he would have been eligible for release on bail before New Jersey's enactment of the CJRA," the lawsuit states. "And he could have paid a non-excessive amount of bail to secure his future appearance, likely with the help of a surety company like Plaintiff Lexington National. He then would have enjoyed his full pre-trial liberty, just like any other presumptively innocent member of society. Instead, under the CJRA, the court never had the option to set bail, let alone to give Plaintiff Holland the opportunity to post it."

Named as one of the defendants in the suit, New Jersey Attorney General Christopher Porrino said in a statement that the new release system "continues to meet its dual goals of protecting the

community by detaining without bail the most dangerous defendants, while at the same time minimizing pre-trial incarceration of low-risk, indigent defendants.”

With similar criminal justice reform under consideration in several other states, the outcome of this lawsuit could have a major impact on both government in the future and the survival of the bail bond industry. Legal challenges already filed in New Jersey have yet to overturn the state’s changes.

Follow @jtrinacria on Twitter.

Bar fight over football morphs into bail reform challenge

[Nicholas Pugliese](#), State House Bureau, @nickpugz Published 8:18 a.m. ET



What started as a bar fight over the Philadelphia Eagles has morphed into a legal challenge to one of Gov. Chris Christie's signature achievements on criminal justice.

In the latest attempt to derail [sweeping revisions](#) to New Jersey's bail laws that took effect Jan. 1, lawyers for a Maryland-based bail bonds company have alleged in a federal lawsuit that the changes violate defendants' constitutional right to bail.

The bail bond industry has led the fight against bail reform in New Jersey and elsewhere, worried that a movement toward less reliance on money bail could put the industry out of business.

The class-action suit was filed last week by former U.S. Solicitor General Paul Clement on behalf of a 32-year-old Dallas Cowboys fan, Britton Holland of Camden County, and Lexington National Insurance Company, which does business in New Jersey.

Holland was charged with second-degree aggravated assault in April for his alleged role in an altercation at a Winslow Township tavern that left one man with a broken nose and another man with facial fractures. The fight stemmed from an argument over football, according to [The Philadelphia Inquirer](#).

Instead of granting Holland bail and letting him walk free until trial, as would likely have occurred before New Jersey's bail reforms took effect, a judge ordered that Holland wear a GPS-tracking ankle bracelet and agree to home detention as a condition of his release.

Clement, who served under President George W. Bush, called Holland's GPS bracelet "a modern-day scarlet letter" that has illegally curtailed his liberty. He contends in his lawsuit that bail is guaranteed in the Eighth Amendment of the U.S. Constitution and that Holland and other defendants are entitled to it as an alternative to other court-imposed conditions.

According to the lawsuit, Holland "cannot shop for food or basic necessities and cannot take his son to baseball practice" as a result of the monitoring.

Before 2017, courts in New Jersey granted or denied bail based on defendants' ability to pay, a system that was criticized for being unfair to the poor. Chief Justice Stuart Rabner of the state Supreme Court, who was a driving force behind the changes, often cites a 2012 study that found one in eight inmates in New Jersey's county jails were held there because they could not pay \$2,500 or less in bail.

Judges now conduct individual risk assessments based on suspects' criminal history and the charges they face before deciding whether to hold or release them with or without monitoring before trial. Monetary bail is rare.

Attorney General Christopher Porrino, who is named as a defendant in the suit, said in a statement Tuesday that "criminal justice reform continues to meet its dual goals of protecting the community by detaining without bail the most dangerous defendants, while at the same time minimizing pre-trial incarceration of low-risk, indigent defendants."

"We intend to vigorously defend this suit, just as we have the numerous prior unsuccessful attempts to upend these reforms," he said.

New Jersey's bail reform, which enjoyed rare support from all three branches of state government, [survived another legal challenge](#) earlier this year when the New Jersey Association of Counties filed a complaint with the little-known state Council on Local Mandates, arguing that the bail law was unconstitutional because it imposed an "unfunded mandate" on New Jersey local governments.

The council voted 4-3 to dismiss the complaint.

For months, representatives of the bail bond industry have also opposed the changes, arguing that some defendants released since Jan. 1 pose a risk to public safety. They have echoed the [complaints of local police](#) that the new system sends too many serious and at times repeat offenders back to the streets rather than to jail.

But the arguments made in the latest lawsuit are novel, in that they assert that everyone should have a right to buy their way out of court supervision, said Alexander Shalom, a lawyer at the American Civil Liberties Union of New Jersey.

“There's something a little disingenuous about taking both positions,” he said of the bail bond industry. “Essentially what they're saying is for poor people, this system isn't rigorous enough, doesn't have enough restrictions, but for rich people, it has too many.”

Shalom added that defendants in New Jersey have a right to be released on the least onerous set of conditions possible and that defendants can challenge those conditions in court.

“But that's not what the lawsuit here seeks,” he said. “What they're saying is we don't even get into conversations about what's too onerous. We just have a right to buy our way out of it. And I don't think that is a system that either public safety or the constitution demands.”

Clement and his team of lawyers are seeking to block the new bail laws and have asked the U.S. District Court in New Jersey to hold a hearing on the case by July 17.

Email: pugliese@northjersey.com

Dallas Cowboys fan claims New Jersey judge denied bail after bar fight

by David Yates |
Jun. 23, 2017, 9:24am



NEW JERSEY - a Dallas Cowboys football fan involved in a bar fight is claiming he was denied his constitutional right to bail by a New Jersey judge.

The class action lawsuit was filed in the U.S. District Court for the District of New Jersey.

According to a lawsuit, 32-year-old Brittan Holland was arrested and charged following an argument and fight with a Philadelphia Eagles fan in Winslow Township. He was subsequently ordered to be released wearing a GPS ankle monitor pending his trial.

However, the suit contends that this action reflects the unlawfulness of New Jersey's bail reform laws, which took effect on Jan. 1. Intended to make things more fair for defendants who lack the financial resources to be bailed out, the new system calls for judges to utilize a risk assessment tool to determine whether to hold defendants in jail or release them on a simple promise to appear.

The suit, filed by former U.S. Solicitor General Paul Clement on behalf of Holland and Lexington National Insurance Corporation, which represents others in Holland's situation, maintains that New Jersey's current bail reform laws are illegal.

Clement argues that bail is guaranteed in the Eighth Amendment of the Constitution.

The defense is led by Attorney General Christopher Porrino, representing Gov. Chris Christie's administration, to which he reports. Christie was strongly behind the push for New Jersey bail reform when it passed in 2014.

By ordering Holland's release on the condition that he wear an ankle monitor, Clement's suit states that he was thus denied the option of bail, to which he should have been legally entitled.

Since taking effect, the state's new bail laws have been highly controversial, with both law enforcement and victims groups criticizing it as creating a threat to public safety.

Under the former system, which used money bail to create accountability, potentially dangerous defendants were carefully monitored by bail agents after being released. With the new system, there is little incentive for a person who has been freed from jail to show up for court, the press release states.

As for Holland, Clement's suit claims that under the previous law, he would have very likely "paid a non-excessive amount of bail to secure his future appearance, likely with the help of a surety company like Plaintiff Lexington National. He then would have enjoyed his full pre-trial liberty, just like any other presumptively innocent member of society."

However, because the court never had the option to set bail, Holland's release was secured through non-monetary conditions, which included the use of an ankle monitor, through which his "liberty is sharply curtailed." The suit adds, "he cannot shop for food or basic necessities and cannot take his son to baseball practice"

A preliminary injunction motion has been filed, with the court being asked to hear the matter by July 17 – and rule on it in an expedited fashion.

The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the U.S., the press release states.



The Ridgewood Blog

The Ridgewood Blog Brings a Free Market Laissez-faire Point of View to Local, New Jersey State and National Issues



BAR FIGHT LEADS TO LAWSUIT CLAIMING FOOTBALL FAN'S CONSTITUTIONAL RIGHTS DENIED BY NEW JERSEY BAIL REFORM

Former U.S. Solicitor General Paul Clement Leads Battle Against Christie Administration

June 23, 2017

the staff of the Ridgewood blog

Ridgewood NJ, A class action lawsuit has been filed in the United States District Court for the District of New Jersey. The case of Holland v. Porrino, et al concerns a Dallas Cowboys football fan involved in a bar fight, who claims he was denied his constitutional right to bail by a New Jersey judge.

32-year-old Brittan Holland was arrested and charged following an argument and fight with a Philadelphia Eagles fan in Winslow Township. He was subsequently ordered to be released wearing a GPS ankle monitor pending his trial. However, the suit contends that this action reflects the unlawfulness of New Jersey's bail reform laws, which took effect on January 1. Intended to make things more fair for defendants who lack the financial resources to be bailed out, the new system calls for judges to utilize a risk assessment tool to determine whether to hold defendants in jail or release them on a simple promise to appear.

Filed by former U.S. Solicitor General Paul Clement on behalf of Holland and Lexington National Insurance Corporation, which represents others in Holland's situation, the suit maintains that New Jersey's current bail reform laws are illegal. Clement, widely regarded as one of the greatest constitutional litigators of our time, contends that bail is guaranteed in the Eighth Amendment of the Constitution.

The defense is led by Attorney General Christopher Porrino, representing Governor Chris Christie's administration, to which he reports. Christie was strongly behind the push for New Jersey bail reform when it passed in 2014.

By ordering Holland's release on the condition that he wear an ankle monitor, Clement's suit states that he was thus denied the option of bail, to which he should have been legally entitled.

Since taking effect, the state's new bail laws have been highly controversial, with both law enforcement and victims groups criticizing it as creating a threat to public safety. Under the former system, which used money bail to create accountability, potentially dangerous defendants were carefully monitored by bail agents after being released. With the new system, there is little incentive for a person who has been freed from jail to show up for court.

As for Brittan Holland, Clement's suit claims that under the previous law, he would have very likely "paid a nonexcessive amount of bail to secure his future appearance, likely with the help of a surety company like Plaintiff Lexington National. He then would have enjoyed his full pre-trial liberty, just like any other presumptively innocent member of society."

However, because the court never had the option to set bail, Holland's release was secured through non-monetary conditions, which included the use of an ankle monitor, through which his "liberty is sharply curtailed." The suit adds, "he cannot shop for food or basic necessities and cannot take his son to baseball practice"

The plaintiff in this case is bringing three claims against New Jersey bail reform: (1) deprivation of his Eighth Amendment and Fourteenth Amendment right to bail by denying his right to bail as an option in the first instance; (2) deprivation of his rights of due process; (3) violation of his Fourth Amendment rights to be free from unreasonable searches and seizures, as a result of being required to be placed on GPS and other monitoring.

A preliminary injunction motion has been filed, with the court being asked to hear the matter by July 17 – and rule on it in an expedited fashion. Practically speaking, New Jersey's bail reform laws could face a court injunction within the next four weeks. If that occurs, it would entirely derail the new laws and once again, restore monetary bail, within the discretion of a judge, as a required consideration as a first option when it comes to setting bail.

About the American Bail Coalition

The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States. Comprised of the nation's largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilizes its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions.

The Paramus Post

Lawsuit Claims Football Fan's Constitutional Rights Denied By New Jersey Bail Reform

by Post | Wednesday, June 21 2017 @ 01:56 PM EDT | Posted in News & Views

Former U.S. Solicitor General Paul Clement Leads Battle Against Christie Administration
Lakewood, CO (June 20, 2017) – A class action lawsuit has been filed in the United States District Court for the District of New Jersey. The case of Holland v. Porrino, et al concerns a Dallas Cowboys football fan involved in a bar fight, who claims he was denied his constitutional right to bail by a New Jersey judge.

32-year-old Brittan Holland was arrested and charged following an argument and fight with a Philadelphia Eagles fan in Winslow Township. He was subsequently ordered to be released wearing a GPS ankle monitor pending his trial. However, the suit contends that this action reflects the unlawfulness of New Jersey's bail reform laws, which took effect on January 1. Intended to make things more fair for defendants who lack the financial resources to be bailed out, the new system calls for judges to utilize a risk assessment tool to determine whether to hold defendants in jail or release them on a simple promise to appear.

Filed by former U.S. Solicitor General Paul Clement on behalf of Holland and Lexington National Insurance Corporation, which represents others in Holland's situation, the suit maintains that New Jersey's current bail reform laws are illegal. Clement, widely regarded as one of the greatest constitutional litigators of our time, contends that bail is guaranteed in the Eighth Amendment of the Constitution.

The defense is led by Attorney General Christopher Porrino, representing Governor Chris Christie's administration, to which he reports. Christie was strongly behind the push for New Jersey bail reform when it passed in 2014.

By ordering Holland's release on the condition that he wear an ankle monitor, Clement's suit states that he was thus denied the option of bail, to which he should have been legally entitled.

Since taking effect, the state's new bail laws have been highly controversial, with both law enforcement and victims groups criticizing it as creating a threat to public safety. Under the former system, which used money bail to create accountability, potentially dangerous defendants were carefully monitored by bail agents after being released. With the new system, there is little incentive for a person who has been freed from jail to show up for court.

As for Brittan Holland, Clement's suit claims that under the previous law, he would have very likely "paid a nonexcessive amount of bail to secure his future appearance, likely with the help of a surety company like Plaintiff Lexington National. He then would have enjoyed his full pre-trial liberty, just like any other presumptively innocent member of society." However, because the court never had the option to set bail, Holland's release was secured through non-monetary conditions, which included the use of an ankle monitor, through which his "liberty is sharply curtailed." The suit adds, "he cannot shop for food or basic necessities and cannot take his son to baseball practice"

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THE DAILY CALLER

Football Bar Fight Becomes Yet Another Bail Reform Issue In New Jersey

Anders Hagstrom

3:36 PM 06/21/2017



A Maryland bail-bond company turned an April bar fight between two football fans into the most recent challenge against a new bail-reform policy under Republican Gov. Chris Christie in New Jersey.

The law, in effect since January, makes bail charges more affordable and increases the number of defendants who get released without bail. Lawyers from Lexington National Insurance (LNI), which does business in the bail bond industry, filed a lawsuit arguing the change withheld a 32-year-old defendant's constitutional right to bail, North Jersey reported Wednesday.

Dallas Cowboys fan Britton Holland was charged with aggravated assault after an evening bar fight in New Jersey with a Philadelphia Eagles fan. A judge ordered that Holland be released without bail wearing a GPS tracker. Under previous policy, he likely would have been released with no limitations after paying a bail fee.

Former U.S. Solicitor General Paul Clement filed the lawsuit on June 15, calling Holland's GPS tracker "a modern-day scarlet letter," and complaining Holland can't even leave his home to bring his son to baseball practice. Clement argues the 8th Amendment guarantees bail and that the new law infringes on that right.

LNI has been a constant enemy to bail reform in numerous states, fearing that a decreased reliance on money bail could run the bail bond industry out of business.

New Jersey Attorney General Christopher Porrino referenced past challenges to the state's bail reform in a statement responding to the lawsuit, which names him as a defendant.

"We intend to vigorously defend this suit, just as we have the numerous prior unsuccessful attempts to upend these reforms," Porrino said.

New Jersey shrugged off another lawsuit earlier this year from the New Jersey Association of Counties, which argued that the bail law constituted an unfunded mandate on the state's counties. The lawsuit was thrown out in a 4-3 decision by the state's Council on Local Mandates.

Local police have also criticized the bail law for releasing too many potentially dangerous defendants. An illegal immigrant living in New Jersey was released from a county corrections center in May under the new bail law and went on to rob two homes before he was arrested again the same week. Police complained that he should never have been released. **(RELATED: Illegal Immigrant Robs More Homes After Getting Released On New Bail Law)**

"With the old bail guidelines, he would have been held in the MCACC with a bail between \$10,000-\$50,000 due to the degree of his charges," police said.



Cowboys fan involved in bar fight with Eagles fan files suit after being denied bail

COWBOYS



By SportsDayDFW.com Contact SportsDayDFW.com on Twitter: [@SportsDayDFW](https://twitter.com/SportsDayDFW)

Oh, those NFC East rivalries.

Take the case of 32-year-old Brittan Holland, a Cowboys fan who was arrested and charged following a bar fight with a Philadelphia Eagles fan in New Jersey.

In a class action lawsuit filed in the U.S. District Court for the District of New Jersey, Holland claims that the state's current bail reform laws are illegal. Following his arrest, Holland was ordered to be released on the condition that he wear an ankle monitor.

The suit, filed by former U.S. Solicitor General Paul Clement on behalf of Holland and Lexington National Insurance Corporation, claims that Holland was denied the option of bail, to which he should have been legally entitled.

The suit claims that, under New Jersey's previous law, Holland would have probably "paid a non-excessive amount of bail to secure his future appearance and would have enjoyed his full pre-trial liberty."

However, because the court never had the option to set bail, Holland's release was secured through the use of an ankle monitor, through which his "liberty is sharply curtailed."

Clement argues that bail is guaranteed in the Eighth Amendment of the Constitution.

A preliminary injunction motion has been filed, with the court being asked to hear the matter by July 17.



Cowboys fan involved in bar fight with Eagles fan files suit after being denied bail

Jun 23, 2017 - [Dallas Morning News](#)

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Bloomberg BNA

June 23, 2017

Cowboys v. Eagles Brawl Spawns N.J. Bail Challenge

By [Perry Cooper](#)

A New Jersey law supported by Gov. Chris Christie unconstitutionally denies bail to criminal defendants, a class complaint filed June 14 alleges (*Holland v. Rosen* , D.N.J., No. 17-4317, complaint filed 6/14/17).

Dallas Cowboys fan Brittan Holland was charged with assault after a bar fight with a Philadelphia Eagles fan. A court ordered Holland to be released wearing a GPS ankle monitor pending trial, without the option of release on bail.

Holland and surety company Lexington National Insurance Co. challenged the Criminal Justice Reform Act, the New Jersey law underlying the court's release conditions.

The law, which took effect Jan. 1, 2017, requires courts to consider more restrictive release conditions before setting bail. It's intended to benefit defendants who can't afford to post bail.

But it also restricts the pre-trial liberty of defendants, who are innocent until convicted, Holland argues.

Holland brought in Supreme Court heavyweight and former U.S. Solicitor General Paul Clement to represent the 1,286 potential class members. He seeks an order preventing the state from enforcing the law and monetary relief for class members who suffered compensable harm because of the restrictions.

The Camden County prosecutor's office didn't respond to a request for comment.

Kirkland & Ellis LLP and Robinson Miller LLC represent the criminal defendants.

To contact the reporter on this story: Perry Cooper in Washington at pcooper@bna.com

To contact the editor responsible for this story: Steven Patrick at spatrick@bna.com

For More Information

Full text at <http://src.bna.com/qaC>.

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LIFE INSIDE

I'm a Bail Bondsman Who's Tired of Being Demonized

Chris Blaylock as told to Alysia Santo

Jun 1 2017, 9:00pm



Illustration by Dola Sun

A small business owner offers a personal counterargument to the movement in the US that aims to treat people who get arrested with more leniency.

This story was published in collaboration with the [Marshall Project](#).

In 2014, New Jersey voters supported a statewide initiative to largely get rid of cash bail, replacing it with a risk assessment score. These changes have placed the state at the forefront of a nationwide movement to overhaul a bail system critics say leaves poor, low-risk defendants sitting behind bars while dangerous suspects with resources are freed.

The new law went into effect January 1, 2017. Judges now use pretrial risk assessments to help them decide whether to detain people while they await trial, and in the 10,193 cases processed in New Jersey during the first three months of this year, judges set bail just eight times. Another 1,262 defendants were held without bail because they were deemed too risky for release or because they were accused of a serious crime. Facing the collapse of their business, some bail agents have started their own campaign to bring back cash bail. Chris Blaylock is one of the agents leading that charge.

I always figured I would go into the bail business. Growing up, I didn't know my biological father. My mom started dating Tommy, a bondsman in Fairfax, Virginia, right outside the beltway, when I was in my early teens. He took me under his wing, and I learned a lot about becoming a man thanks to him.

He and my mom started Kear Bonding, and they had a townhouse a block away from the jail. In my late teens, the phone would ring all night long, two in the morning, four in the morning. It was ingrained in me to pick it up and say, "Bail bonds, can I help you?" And I would oftentimes go with them to the jail to sign up clients. It wasn't uncommon for my mom or my step-dad to sit at the jail for hours waiting for a client to come out, not because they had to but because they chose to. We would arrange to get them in touch with rehabs, to give them a ride home, find them a place to sleep, get them food. There was a real connection with the clients.

Tommy died unexpectedly in 2008. I helped my mom wind down the liability for the bail company down there, and she moved up to New Jersey to be with my family and me. In 2010, we made the decision to start a bail business of our own. I built our first website myself. I did all the campaigns myself. It was a family business. In a strange sort of way, we felt connected again once we started the bonding business back up.

My wife came up with the name, EZ Bail Bonds of New Jersey. It's not exactly original, but it gets to the point, right? I was out cutting the grass when we got our first call; my wife ran to tell me. I didn't even know where the jail was—we had to look it up.

Each state has their own regulations, but the people remain the same. The hardships remain the same.

We grew quickly and got up to three locations at one point, writing somewhere in the neighborhood of 1,200 to 1,400 bonds a year. I remember one guy who we monitored—we did everything we were supposed to, and he still fled. His fiancée, who signed for him, she worked at one of the casinos. She was a homeowner, and she was at risk financially. We eventually apprehended him and surrendered him to authorities, and a month and a half later, I got a letter from him thanking me for taking him into custody and making him face these charges.

I have stories on the other end, too. Most people aren't necessarily pleased they have to go to jail when they miss court. But there's a silver lining that makes it rewarding for us. We protected the victim, the indemnitor who signed, and we protected the court system.

In 2013, we started to hear a lot of talk about bail reform. They were going to put it to voters as a ballot question, and they were selling it as: "We're going to lock up the bad guys and let out the poor." That made sense to a lot of voters. But what they didn't tell you was they were going to virtually eliminate the bail industry with an algorithm.

On January 1 of this year, everything changed. There's still technically still such a thing as "bail:" in New Jersey, but business is virtually nonexistent, so it's not sustainable as a way of life by any means.

It's not a crime if someone has the money to bail out their son and someone else doesn't. And people are making that a crime. They are making defendants into victims.

I'm tired of being demonized as a profiteering industry that preys on the poor. So in February, I built a website, USBailReform.com.

One of the stories we recently posted was [about Terrell Jones](#). He was arrested twice in February. He went through the risk assessment, and they released him with no bail. Catch and release. One day after he was released the second time, he was found unresponsive outside a motel. He'd overdosed and died.

If his bail was \$2,500 and he called family from jail, it's possible they would have refused to bail him out because they were concerned about his drug problems. They could have slowed the process down and arranged a bed for him in rehab. Or, at the very least, they might have been confident he wouldn't overdose in jail. Releasing Jones did nothing for him. If anything, it might have contributed to his death, and I find that disheartening.

In my experience, the average citizen is probably not going to care whether or not our industry survives. We still have a responsibility to the state for the bails we have to service that are still outstanding. I can tell you with confidence I'm still on the hook for \$6 million or \$7 million, easily.

I do have a small office in Delaware that we're getting up and running. We just hope that offsets some of what's going on here in Jersey.

The New York Times

New Jersey Bond Businesses Eye New Growth, From Immigrants

By ELINOR COMLAY JULY 11, 2017



Scott Berlin, owner of Berlin Bail Bonds, a company his father founded in Newark in 1930. More businesses like Mr. Berlin's are finding immigration bail to be a lucrative niche. Credit Mireya Acierto for The New York Times

Scott Berlin's father, the son of Russian immigrants, founded Berlin Bail Bonds in Newark in 1930, providing cash to release defendants in the state and federal courts in that gritty New Jersey city.

The family bond business is still going, but to survive, it is leaning on what used to be a small sideline: writing bonds for the release of detained immigrants.

"I do as many as I determine are secured," said Mr. Berlin, 64. "I would love to do more."

In New Jersey, a change in the law in January largely did away with financial bail. As in other states, lawmakers in New Jersey wanted to reform a bail system that discriminated against the poor and contributed to prison overcrowding.

Under the new system, the New Jersey courts decide whether defendants should be detained or released pending their trial. The courts use an algorithm written to calculate the risk that a defendant will flee or commit another crime, as well as input from the police and prosecutors, to make their decisions.

Some of the more than 800 licensed bail agents in New Jersey are now looking to follow Mr. Berlin, by shifting from a business under threat, because its services are no longer needed by the state's courts, to a related one they see as a growth area under a new administration that has taken a hard line on immigration.

More than half of all immigrants subject to deportation proceedings are detained when the proceedings begin. About half the detainees will receive a custody hearing before an immigration judge; the other half remain detained pending a deportation proceeding. Only about half again of those who get a hearing will be released on bail, according to a report published last year by the Transactional Records Access Clearinghouse at Syracuse University.

There are roughly 950 immigrants detained in six facilities in New Jersey, according to United States Immigration and Customs Enforcement.

While there is no data on how many of the immigrants are now out on bail, New Jersey immigration lawyers and bail agents say detentions are on the rise.

New Jersey bail bond businesses want to tap that growth.

Antonio Roman, a bondsman in Camden, said he was studying for an insurance license that would allow him to write immigration bail bonds. In May, he wrote just \$43,000 in bail bonds, compared with \$2.9 million in the same month a year earlier.

Writing immigration bail bonds, he said, could help him make up some of that lost business.

Bail agents can charge a one-time fee, or premium, of 15 percent, for writing an immigration bond, compared with the 10 percent that most had charged for state criminal bail in New Jersey. (The average immigration bond in 2014 was \$6,500.)

On the face of it, that might seem like a good deal: a 15 percent payout just to make sure that someone shows up at the government's request.

But it comes with some risks. It is not a short-term loan: United States immigration courts are dealing with a record backlog of cases and proceedings can draw out over many years.

In addition, bail agents can be on the hook for transportation charges if immigrants move for work or other reasons, and immigration cases are often shuffled to different courts. And while most immigrants want to remain in the country, the fear of deportation is enough to make some

skip hearings. Then, if they do not have Social Security numbers, it can be harder for bail agents to find them.

“They’re more risky than a regular bail bond,” Mr. Roman said.

If someone released on bail fails to attend an immigration court hearing, the bail bond will be breached, meaning that the bail agent takes a loss.

Bail agents and the surety companies that jointly underwrite immigration bail bonds usually require them to be at least 80 percent secured by the immigrants and any co-signers. Still, it is an appealing business if you are selective about whom you write bail for, Mr. Roman said.

For some, like Mr. Berlin, immigration bail can be a lucrative niche, especially when the defendants already have lawyers. This is executive-style bail.

Clients might be employees of high-tech companies, for example, or immigrants who own their own businesses, he said. They might have overstayed their visas, or have some other residency status issue. Often, employers will co-sign for immigrant employees if they or their families cannot afford the price of bail.

“I evaluate risk,” Mr. Berlin said. “I try to be a little compassionate but I try to be very selective, too. I have to be, otherwise I wouldn’t exist, I just wouldn’t make it.”

Most of the people whom Mr. Berlin bails out of immigration detention centers in New Jersey, for example, have lawyers. That puts them in a different category of immigrant, since most detained immigrants do not.

Having access to legal representation also means the person is less likely to be deported, according to the Transactional Records Access Clearinghouse, which analyses immigration court data.

James Ryan McNeely, a New Jersey bondsman who specializes in immigration bail bonds at A. J. Dell’Omo in Neptune, N.J., said his company was also selective about the immigration bail bonds it writes.

He does not need to charge additional fees because his business has a low failure rate, he says. For clients recommended to him by lawyers, he might help pay some of the bail amount — say 20 percent — through an interest-free payment plan.

“If somebody fails to show up for an immigration bond, differently than a state bond, the feds don’t give you the money back,” he said. “That’s it, conversation over.”

Nationally, two big, privately held companies provide immigration bonds, Libre by Nexus and Action Immigration Bonds. Libre by Nexus, based in Verona, Va., has expanded rapidly since 2009 to offer a range of services to detained immigrants, including legal advice. Action Immigration Bonds, founded in 1974 and based in Fort Lauderdale, Fla., focuses on immigration bonds.

Some customers have sued Libre by Nexus, accusing it of exploiting them by using deceptive practices. The lawsuit, filed in federal court in California, claims that Libre by Nexus abused customers' limited English and vulnerability by tracking them with GPS shackles and signing them up to high-interest-rate loans to pay for their bail.

In a statement, the company's chief executive, Mike Donovan, said the suit was without merit and represented "a tiny fraction of the thousands of clients we have helped that eagerly recommend Nexus to their loved ones in the event they need us."

Action Immigration Bonds did not respond to requests for comment.

In the past, bad practices among some in the criminal bond business, like a failure to collect sufficient collateral, along with high rates of incarceration of people who could not afford bail, helped spur the changes in New Jersey.

The state's bail agents were prepared for the 2014 law, which took effect in January and allows more people on minor crimes to go free after arrest with just a summons, and for more people arrested for serious crimes to be automatically detained. They expected to still write bail for the people between those extremes.

But as the law has been put into effect, the majority of people arrested and given a court date have been released without financial conditions.

Jeff Clayton, the executive director for the American Bail Coalition in Lakewood, Colo., said he expected that some New Jersey bail agents would seek to write immigration bail bonds as a way to make up for lost business. But he said he worried the future of that aspect of bail bond writing is also in doubt.

"The Justice Department largely controls immigration bail and whether that market is going to shrink or increase we don't know, because we don't know what the policies are going to be," he said.

The New Jersey attorney general's office last month changed guidelines to require detention for certain charges, such as gun crimes. The American Bail Coalition is optimistic that further fine-tuning of the reform will happen, but Mr. Clayton said he worried it might take time that the bail agents, who are small-business owners, do not have.

"Agents are going out of business," he said.

A version of this article appears in print on July 12, 2017, on Page B6 of the New York edition with the headline: New Jersey Bond Businesses Eye New Growth, From Immigrants.



LAW

New Jersey bond businesses eye new growth, from immigrants

Elinor Comlay

July 12, 2017

[The New York Times](#)

SHARES



Mireya Acierio | The New York Times

Scott Berlin, owner of Berlin Bail Bonds, who relies on writing bonds for the release of detained immigrants to bring in more business, in Newark, N.J., June 12, 2017.

Scott Berlin's father, the son of Russian immigrants, founded Berlin Bail Bonds in Newark in 1930, providing cash to release defendants in the state and federal courts in that gritty New Jersey city.

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But it comes with some risks. It is not a short-term loan: United States immigration courts are dealing with a record backlog of cases and proceedings can draw out over many years.

In addition, bail agents can be on the hook for transportation charges if immigrants move for work or other reasons, and immigration cases are often shuffled to different courts. And while most immigrants want to remain in the country, the fear of deportation is enough to make some skip hearings. Then, if they do not have Social Security numbers, it can be harder for bail agents to find them.

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But as the law has been put into effect, the majority of people arrested and given a court date have been released without financial conditions.

Jeff Clayton, the executive director for the American Bail Coalition in Lakewood, Colo., said he expected that some New Jersey bail agents would seek to write immigration bail bonds as a way to make up for lost business. But he said he worried the future of that aspect of bail bond writing is also in doubt.

"The Justice Department largely controls immigration bail and whether that market is going to shrink or increase we don't know, because we don't know what the policies are going to be," he said.

The New Jersey attorney general's office last month changed guidelines to require detention for certain charges, such as gun crimes. The American Bail Coalition is optimistic that further fine-tuning of the reform will happen, but Mr. Clayton said he worried it might take time that the bail agents, who are small-business owners, do not have.

"Agents are going out of business," he said.



Bipartisan bill could get rid of money bail system



By: [FOX4News.com Staff](#)

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Bail has been the answer to make sure someone arrested and charged with a crime can get out of jail and will still show up for trial. But a bill co-authored by Republican Senator Rand Paul and Democrat Senator Kamala Harris seeks to encourage states to eliminate the money secured bail system.

It's called the Pretrial Integrity and Safety Act of 2017. The unlikely pair says the money bail system has proven ineffective in protecting public safety and that pretrial detention, even for short periods, has unintended consequences on the person jailed and their family.

The current bail system is the target of criminal justice reform.

“The push these days, and it’s a bipartisan push nowadays, is to make sure that the decisions regarding a person’s bail is based on risks and not their resources,” explained Judge Brandon Birmingham, the presiding felony court judge.

D.C. and a handful of states have moved away from money secured cash bail system. The focus now is on gauging individual risks. The focus on pretrial release programs is gauging individual risks of a person and whether they are likely to offend again or not show up for trial.

Jeff Clayton is the executive director of the American Bail Coalition. He agrees reducing reliance on bail can make sense in certain cases but points to a lawsuit challenging New Jersey’s reformed bail system.

“That monetary bail has to be an option for a defendant to be able to post bail and get out of jail under the eighth amendment of the U.S. Constitution,” he said. “So I think it’s an open question at this point.”

Defense Attorney Cheryl Wattley also teaches at the UNT Dallas School of Law.

“Jurisdictions who use the bail schedule who, ‘If you get arrested for this offense, I don’t care who you are. I don’t care how long you’ve lived in this community. I don’t care if you’ve never taken a bus outside of your county. You still have to pay this amount of money,’” she explained.

“When folks say these bail schedules are unfair... Well, let’s think about this: if we use the risk assessment that Senator Harris wants to use, we’re gonna consider people’s prior crimes as a basis to oppose bail, not the conduct that they are alleged to have done.” Clayton said. “So which way is more fair?”

That’s the question states are now asking and trying to answer. Judge Birmingham has been contacted by Texas Supreme Court Chief Justice Nathan Hecht, a Republican who is a big believer in sweeping bail reform.

Hecht, Birmingham and others will go to Kentucky in October and learn how that states bail system is working without the traditional money secured bail.



Mother of Murder Victim Sues to End NJ's Criminal Justice Reform

Colleen O'Dea | August 1, 2017

June Rodgers' lawsuit — which names Christie, AG Porrino and others — claims bail reform put son's killer on the street, even though he was a repeat offender



June Rodgers, mother of murder victim Christian Rodgers

The mother of a man allegedly killed this year by a repeat offender, filed suit Monday in federal court against Gov. Chris Christie and state Attorney General Christopher Porrino, among others. She is seeking to end New Jersey's seven-month-old criminal justice reform, as well as damages for her son's death, because the alleged killer was released without bail after being arrested for gun possession.

It is the latest legal effort to upend the state's major reform, which began January 1. Previously, the system released those accused of a serious crime on bail or forced them to await trial in jail. The reform calls for alleged criminals to be released without bail — with varying degrees of monitoring. Those accused of the most heinous offenses are detained until their case goes before a judge.

The shift has pitted civil liberties advocates against the bail bonds industry and some in law enforcement.



Duane Chapman (Dog the Bounty Hunter)

Bankrolling the suit by June Rodgers, the mother of the victim, is Nexus Services, a company involved in federal immigrant bail securitization and ankle monitoring. Supporters of the suit, which was announced in front of the federal courthouse in Trenton, included Duane Chapman, who once starred in the Dog the Bounty Hunter television series, and his wife Beth Chapman, president of the National Bail Bonds Association.

'Stained by blood'

"Your legacy, sir, will forever be stained by the blood of June Rodgers and Vincent Osby's son," said Beth Chapman, addressing her comments at Gov. Chris Christie, who championed bail reform beginning in 2012.



Photographs of Christian Rodgers, who was murdered in April, were displayed at a press conference in Trenton yesterday.

The lawsuit charges the governor pushed for the change "to save money on the costs of incarceration" and said the murder of 26-year old Christian Rodgers was "a direct result of Christie and Porrino's deplorable apathy."

Rodgers, 26, was walking along a street in Vineland on April 9 when he was shot 22 times. Police charged Jules Black, a 30-year-old with addresses in Vineland and Millville, with the murder. Black had been arrested by state police just four days earlier and charged with unlawful possession of a handgun. The lawsuit states that Black had multiple felony convictions on his record, including resisting arrest, burglary, drug offenses, eluding police, and hindering apprehension. Under the new rules, a risk assessment of Black was done; the prosecutor did not seek his detention; and Black was released.

A mother's tears

June Rodgers, the victim's mother, tearfully said her son had "run for his life after being shot and the police had to follow the blood trails to find my baby." Addressing her remarks at Christie and Porrino, she said, "You have devastated my family and we will never be the same."

The suit contends Black "would have been locked up" had it not been for bail reform's use of a public safety assessment created by the Laura and John Arnold Foundation, a Texas-based organization that is working on criminal justice reform. It also names as defendants the foundation and Anne Milgram, New Jersey's attorney general from June 2007 through January 2010 who later worked, according to the suit, as vice president of criminal justice policy with the foundation and was the "chief architect" of the assessment.

Under the criminal justice reform, which New Jersey voters passed as a constitutional amendment overwhelmingly in 2014, information about all those charged in Superior Court is put through an algorithm that calculates what kind of a danger the defendant would be to others and the likelihood of his appearing for trial. Depending on the score returned by the assessment, a person may be released with no conditions, with the need to check in by phone or in person with a pretrial services officer, or with an ankle bracelet and a limit on his ability to leave the home. Alternatively, the defendant may be held until trial.

Virtually eliminating money bail

The law also provides for money bail when a judge deems that appropriate, but the most recent data from the state's Administrative Office of the Courts shows that just 19 of nearly 22,000 defendants have been released on monetary bail since January 1.

Supporters of the change, including Supreme Court Chief Justice Stuart Rabner, said the old system was unfair because a person's wealth, rather than how dangerous he might be, determined whether he was released or held in custody until trial. A study found that 12 percent of those held in county jails were there because they couldn't post bond of \$2,500 or less — and more than two-thirds of these were members of minority groups. At the same time, wealthier individuals who might have committed more serious crimes and could afford bail were able to await trial at home.

Over the first six months of the new program, about 15 percent of defendants have been ordered held until trial, and the number of people being held in jail pre-trial was 20 percent lower on June 30 than at the start of the year. Another part of criminal justice reform guarantees that a person detained must be tried within two years, with other interim deadlines, to try to minimize the amount of time a person must spend in jail before being tried.

Allowing for the confinement of defendants without bail is the focus of an earlier suit filed — a class action filed on behalf of 32-year-old Brittan Holland and a bail bonds firm. Around the same time Black was being released, Holland and his father were getting into a fight at a Camden County bar with fans of rival football teams. Charged with second-degree assault, Holland was eventually released on the requirement he wears an ankle bracelet and check in with pretrial services officers. The federal class action suit, filed in late June, asserts Holland has a constitutional right to money bail that was violated.

The Rodgers suit, and those present at the press conference in Trenton on Monday, contend Rodgers would still be alive if the state still required money bail.

'A community of supervision'



Michael Donovan, president of Nexus Services, which is paying for the Rodgers' lawsuit; Nexus makes ankle monitoring bracelets.

“The fundamental success of the bail bonds industry is that it creates a community of supervision ... In the case of Jules Black, there was no one on the hook,” said Mike Donovan, president of Virginia-based Nexus Services. “If he had been held, we know what would have happened. Had he been released on secured bond we know that there would have been someone on the hook, someone tied to his release. It isn’t rocket science that when you take away accountability you get a bad result and that’s what this is. It’s no accountability and it leads to tragedy.”

Reform proponents dispute that.

Alexander Shalom, an attorney with the New Jersey chapter of the American Civil Liberties Union, said there is no way of knowing whether Black would have made bail, or whether if he had, he might have taken the same actions.

'Wishful thinking'

"They're comparing the new system with some mythologized system that didn't exist," he said. "The murder of Mr. Rodgers was tragic, but it's wishful thinking that it would not have happened under a system of money bail."

"I can come up with dozens of cases of people who were released on money bail and then committed horrible crimes," Shalom added, and cited the fatal carjacking of a lawyer at the Short Hills Mall in 2013 as just one instance. "No system of pretrial release is perfect."



Beth Chapman, president of the National Bail Bonds Association

But Beth Chapman maintained that when those at the local bail bonds office saw that Black had been arrested more than two dozen previous times and that previous bounty hunters had to chase after and apprehend him, no one would have written his bond because of the risk involved.

"Just because he would have been given bond does not mean he would have made bond," she said.

"This hug a thug campaign has to stop," said Duane Chapman, a bail bondsman whose exploits were chronicled in two reality shows spanning 11 years. "This has got to stop and we are going to stop it right now."

Low risk assessment?

The lawsuit cites a second case of someone murdered by a person released without bail, saying Dominick Richards killed Anishalee Cortes, and then himself, on June 13, two months after he was released after he was charged with aggravated assault with a firearm against Cortes as well as other offenses. Although the Essex County prosecutor had sought

pretrial detention of Richards, a judge released Richards because the risk assessment found him to be a low risk.

Donovan acknowledged that Porrino issued a new directive last May, even as he declared “bail reform is working,” that is designed to keep more potentially violent criminals behind bars until trial. It directs prosecutors to seek pretrial detention for offenders charged with gun crimes, assault on a police officer, certain sexual crimes involving children, and any indictable offense committed while on release or under post-conviction supervision for another crime.

Still, he said, “At the end of the day, the people of New Jersey are less safe because of criminal justice reform.”

Racial bias

Additionally, the lawsuit attributes racial bias motivations to both Christie and Porrino, saying they knew the assessment would lead to more blacks being released into predominantly African-American neighborhoods, because the ratio of black-to-white pretrial defendants that get incarcerated in New Jersey is 12-to-1. It further states that Christie’s refusal to fully fund the state’s school-aid formula, his pushing his alternative “fairness formula,” and his veto of a bill that would have eliminated the cap on welfare recipients who have additional children prove a “history of disparate treatment of African Americans motivating his policies.”

Spokesmen for Christie and the Arnold Foundation declined to comment. Porrino’s office did not return a request for comment.

The suit claims June Rodgers’ 14th amendment due process rights were violated by the killing. It also asserts product liability claims against the Arnold Foundation and Milgram for designing a faulty product — the public safety assessment — and against Arnold for wrongful death. It seeks an injunction on the use of the assessment and punitive damages.

THE CRIME REPORT
YOUR CRIMINAL JUSTICE NETWORK

Suit by Mother of Murder Victim Challenges NJ Bail Reforms

By Crime and Justice News | August 1, 2017

June Rodgers alleges that the state should be held responsible after her son was shot and killed in April by a convicted felon who had been released without bail a few days earlier following an arrest for illegally possessing a handgun . . .

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The Washington Post

Post Nation

Chris Christie claimed a reform was ‘good government.’ A grieving mother says it killed her son.

By [Cleve R. Wootson Jr.](#) August 5



Former bail bondsman Duane “Dog” Chapman, far left, and his wife, Beth Smith, join the family of Christian Rodgers and the family’s lawyers as they announce a wrongful-death lawsuit in New Jersey. (Bruce Shipkowski/AP)

Jules Black’s feud with Christian Rodgers ended abruptly in April, in a hail of gunfire.

Shortly after he'd gotten out of jail, Black found Rodgers on a street in Bridgeton, N.J., drew a handgun and opened fire, police and court documents say.

Rodgers tried to sprint to safety but was struck anyway. Black fired at him 22 times, police say.

Officers responding to reports of a drive-by followed a trail of blood and found Rodgers behind a home, bullet-riddled and dead, his mother's lawyer said.

Black is in jail on a murder charge; his attorney maintains his client's innocence.

Since her 26-year-old son's death, June Rodgers has focused her anger on New Jersey Gov. Chris Christie (R) and the state's newly overhauled bail system.

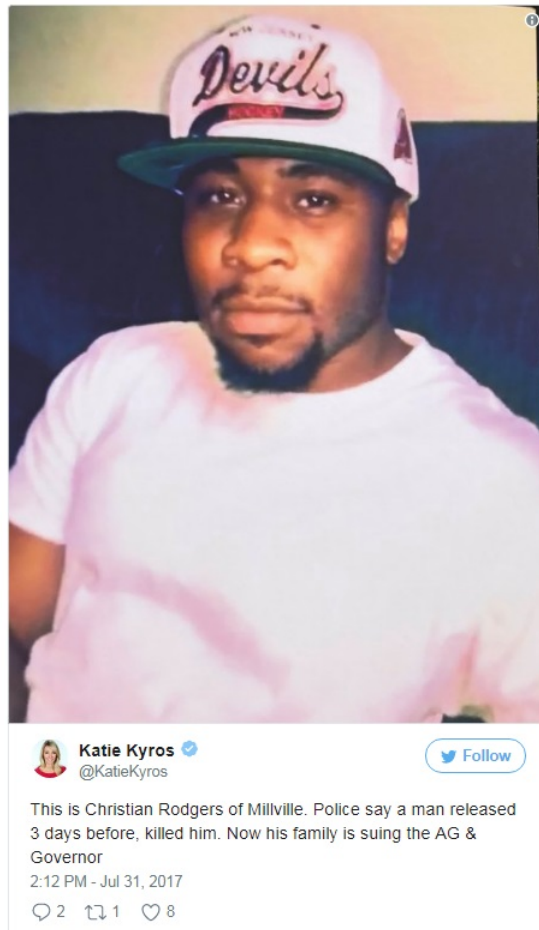
Black, a felon, had been jailed April 5, accused of illegally possessing a gun. But he was back on the streets within a day because of changes to the state's bail law, June Rodgers said — and her son is now dead because, she said, New Jersey's method of determining who gets out of jail before trial is flawed.

Rodgers is suing the governor, the state's attorney general and the inventors of a bail risk assessment tool that determined that Black was a low risk to society before he allegedly killed her son. Her lawsuit seeks wrongful-death damages and an injunction against the bail law, which went into effect in January.

“I’m thinking more people should get up and speak out, because this is not right,” she said at a news conference outside the U.S. District Court building in Trenton, the Daily Journal reported. “I don’t understand for the life of me how anyone can say it’s okay the way the system is.”

She was joined at the news conference by Duane “Dog” Chapman of “Dog the Bounty Hunter” fame, who criticized the state’s “dangerous, fake reform” and railed against the bail-law changes, which could destroy the industry that made him a reality TV star.

“Christie should be ashamed of himself,” the former bail bondsman said, [according to HuffPost](#). “The governor needs to know that the eyes of every American who loves their family and wants to preserve law and order are on him right now.”



The lawsuit — funded by Nexus, a company that connects people arrested for immigration offenses with bail bondsmen — raises questions about a new, analytics-based system to help judges determine who is released from jail. The public-safety assessment is the foundation of an aggressive overhaul in New Jersey and is also being considered in a growing number of cities and states.

Christie and other supporters say it is a fair and fiscally responsible way to determine who needs to remain in jail pending trial. Critics claim the algorithm is flawed and threatens to flood the streets with violent or habitual offenders.

“It’s a catch-me-if-you-can approach to a situation while people are dying or significantly injured by a program that needs to be shelved,” said Mario Williams, an attorney for June Rodgers. “You’re trying to cut costs and allegedly save taxpayer money and brag about that while violent criminals are being let out.”

New Jersey’s bail-setting system had been in place since before the Revolutionary War, [according to New York Magazine](#). The state’s constitution required bail to be set for everyone charged with a noncapital crime as leverage for defendants to show up for court. That meant all crimes were eligible for bail because the state [no longer has the death penalty](#).

But those who supported the bail overhaul say New Jersey’s system was riddled with problems. Low-level, nonviolent offenders who couldn’t afford cash bails languished in jail for weeks or months. The lost time cost them jobs, strained their families and was a burden for taxpayers, the critics of the old system said.

A disproportionate number of people who couldn't make bail were poor and/or minorities. And the old system was inefficient, Christie and other change advocates say, costing taxpayers millions to keep defendants locked up when there was little risk of them skipping trial.

A philanthropic agency set up by a former hedge fund manager tried to fix the system.

The initiative was led by former New Jersey attorney general Anne Milgram, who was hired to develop a risk assessment algorithm to determine the likelihood that an arrested person would return for their court date, as well as the odds that they'd commit a violent crime while out. Now, [38 jurisdictions use the Laura and John Arnold Foundation's public safety assessment](#), including three states — Arizona, Kentucky and New Jersey.

“I wanted to introduce data and analytics and rigorous statistical analysis into our work,” Milgram said in a TED talk about the tool. “In short, I wanted to ‘[Moneyball](#)’ criminal justice.”



In addition to using the algorithm, New Jersey's bail overhaul is based on the notion that most offenders don't need to be jailed or even given bail to make sure they meet a court date.

Some receive a phone reminder or electronic monitoring. The assessment system gives recommendations, but in the municipalities that use them, final decisions about bail or monitoring rest with a judge.

A number of advocacy groups and experts say the new system is fairer — and cheaper.

“If you're incarcerating people for failure to pay fines and fees because they can't make bail, it's unnecessarily expensive,” said Nancy Fishman, a project director at the Vera Institute, a nonprofit policy research organization.

The change was also viewed as a fiscally conservative measure. That's what Christie argued when he successfully lobbied legislators to enact overhaul legislation.

Christie's office and the state's attorney general declined to comment for this article, citing the Rodgers family's lawsuit. But the governor talked about the broad support in 2014, after a committee appointed by the chief justice of the state's Supreme Court studied the bail system and gave its nod to the changes.

“This is good government,” [Christie said at the time](#). “It's supported by Republicans and Democrats. It has united our state Supreme Court and urban mayors. It has brought together an incredible cross section of advocacy groups in New Jersey.”

In August 2014, [53 of the state's 69 senators voted for it](#) across party lines. Later that year, 61 percent of New Jersey voters approved a constitutional amendment that allows judges to deny bail for the most violent offenders. Together, the measures made New Jersey's bail overhaul one of the nation's most aggressive.

Of the 10,193 cases processed in New Jersey through the first three months of this year, judges set bail eight times, [according to the Marshall Project](#). Another 1,262 people were held without bail because judges believed they were too risky to release. Most were released on a written promise to appear. Others were ordered to be electronically monitored. It's unclear how much money the bail-system overhaul has saved taxpayers this year.

But the clear losers in the revamp were the hundreds of bail bondsmen in the state, who suddenly faced a vacuum of customers and an industry collapse.

Chris Blaylock, a second-generation bail bondsman and the founder of [USBailReform.com](#), said people in his industry are angry that they “were never given a seat at the table” during reform discussions. He said the movement to get rid of bail does not adequately address repeat offenders who prey on communities.

“These are people with sexual assaults, with firearms charges, with many priors, getting out with zero accountability,” he said.

The president of Police Benevolent Association Local 231, which represents officers in Bridgeton, said the reform effort has been exploited by career criminals. Under the old system, corrections officer Victor Bermudez said, those criminals would spend more time in jail and less on the streets.

Now, Bermudez told The Post: “I’m seeing the same exact people every week. I’m just seeing them come in with new charges. It’s more work for officers. It’s a lot more work for them.”

In Christian Rodgers’s case, there’s no way to know whether Jules Black would have been able to simply bail himself out of jail on his gun charge under the old system, said Roseanne Scotti, state director of the New Jersey chapter of the Drug Policy Alliance, which led a consortium of groups in favor of the overhaul.

Under the old system, a judge would have been required to set bail after Black was arrested on the gun possession charge. And there was a chance that he could get out if he had the money or worked out a deal with a bondsman. And no one would be able to control Black’s actions once he was free.

“Bail bondsmen do not follow their clients around 24 hours, seven days a week,” Scotti said. “Really, they have nothing to do for you unless you don’t come back to court.”

She conceded that the new system has flaws, but said, “No system is going to be 100 percent risk-free. But you can’t compare the current system to perfection. You have to compare it to the old, imperfect system.”

On Monday, a tearful June Rodgers said her son’s death cannot be ignored. And, she said, New Jersey’s new system should not be called a success.

“I keep hearing how they say this has been ‘a success,’” [Rodgers said](#). “This was successful at giving me an opportunity to lay across my baby’s casket, crying my eyes out.”



Cleve Wootson is a general assignment reporter for The Washington Post.
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Bail bond industry mounts another attack on N.J. reforms

Nicholas Pugliese, State House Bureau, @nickpugz Published 6:00 a.m. ET Aug. 7, 2017 | Updated 11:09 a.m. ET Aug. 7, 2017



Duane 'Dog the Bounty Hunter' Chapman backs family of slain Millville man Christian Phillip Nolan Rodgers, who was murdered by a man released on New Jersey's "Bail Reform" initiative. Produced by Joe Lamberti



(Photo: Joe Lamberti/Staff Photographer)

Reality TV star Duane “Dog the Bounty Hunter” Chapman traveled to Trenton with his wife Beth last week to announce that the couple were joining a federal lawsuit against Gov. Chris Christie aimed at derailing the major changes New Jersey recently made to its criminal justice system.

Standing outside the U.S. District Court building there, Beth Chapman, who serves as president of the Professional Bail Agents of the United States, declared that Christie’s legacy “will forever be stained by the blood” of Christian Rodgers, a 26-year-old man who was gunned down in Vineland earlier this year by a man who just days earlier had been arrested and released under the state’s new bail reform law that Christie supports.

“You created and advanced a program that puts dangerous criminals on the streets to pick off all of your children,” she said of Christie as Rodgers’ tearful parents stood nearby.

The Chapmans’ lawsuit is at least the second legal challenge to New Jersey’s bail reform initiative funded by entities with a stake in America’s multibillion-dollar bail bond industry, which has been crippled in New Jersey as a result of the changes pushed by Christie. As states from Texas to California look to New Jersey for ideas on how to reduce the number of as-yet-innocent people sitting in jail awaiting trial, the fate of New Jersey’s experiment will have implications far beyond its borders.

“The bail industry doesn’t want other states to see successful models that deemphasize money,” said Alexander Shalom, senior staff attorney with the American Civil Liberties Union of New Jersey. “To the extent we’re successful thus far, it scares the bejesus out of them.”

Christie was defiant when asked about the lawsuit last week.

“Bring it on,” Christie told reporters. “Obviously the bail bond industry makes a lot of money off poor people. It’s disgraceful. And we’ve changed the system now so that if you are poor in this state and are charged with a crime, you should not have to stay in jail for being poor.

“Now, are there going to be times when people who get out of jail prior to trial commit other crimes?” he said. “Yes. But is that a justification for mandating that every person stay in jail? I say no, so I welcome the lawsuit.”

Overhaul, backlash

Before 2017, state courts in New Jersey granted or denied bail based on defendants’ ability to pay, a system that was criticized as being unfair to the poor. Chief Justice Stuart Rabner of the state Supreme Court, who was a driving force behind the changes, often cites a 2012 study that found one in eight inmates in New Jersey’s county jails were held there because they could not pay \$2,500 or less in bail.



New Jersey Chief Justice Stuart Rabner (Photo: Chris Pedota/northjersey.com file photo)

On any given day, some 450,000 people across the country are held in jail without having been convicted of a crime, according to a recent report from the American Civil Liberties Union and Color of Change, a racial justice organization. Taxpayers foot the bill for those detentions, while defendants can have their lives upended, losing jobs or having their families torn apart.

After the most far-reaching bail overhaul in the country, judges in New Jersey now conduct individual risk assessments based on suspects' criminal history and the charges they face before deciding whether to hold them or to release them with or without monitoring until trial. Monetary bail is rare.

Some police and elected officials have been critical of the new system, however, and point to cases in which defendants were arrested and quickly released because they were not deemed a threat, only to be re-arrested on new charges.

Such was the case with Rodgers' alleged killer, Jules Black, who had been arrested at least 26 times dating back to 2004 before he was picked up by police during a traffic stop on April 5 for carrying a 9mm pistol in his car.

Despite several prior felony convictions, a judge deemed Black safe enough to be released ahead of his trial. On April 9, he allegedly shot and killed Rodgers.

Attorneys for Rodgers' family, who are affiliated with the for-profit bail services group Nexus Services, maintain that the public safety assessment that judges use to help them make decisions about pre-trial detentions is "fatally flawed" and led to the violation of the Rodgerses' constitutional rights. The suit seeks to halt key parts of New Jersey's bail reform law.

In Black's case and others like his, said Jeff Clayton, executive director of the influential American Bail Coalition, bail as a condition of release could have prevented another crime.

"It would result, on the one hand, in detention if the person's going to not be able to come up with the bail," he said. "Two, third parties and bail agents are involved if they are released. Is that going to stop everybody, all of them, from committing a crime? No. Will it stop some of them because they know their family's on the hook? Yes."

"I would say there's some added layer of accountability when bail agents are involved," Clayton said, referring to the fact that defendants' relatives often co-sign their bail bond contracts and bail agents have a financial incentive to get defendants to appear in court.

In another federal lawsuit filed in June, former U.S. Solicitor General Paul Clement challenged New Jersey's bail reform law on the grounds that bail is guaranteed in the Eighth Amendment of the U.S. Constitution and that defendants are entitled to it as an alternative to other court-imposed conditions. That suit, too, is funded by an entity that benefits from bail bonds.

For-profit bail as a trap

But bail has also been shown to be a financial trap for many families, who get stuck for years paying down debt to for-profit bail agents, if they can afford bail at all. Those agents typically charge a nonrefundable fee of 10 percent of the full bail amount, which they keep even when charges are dropped or defendants are found to be innocent.

Bail also fuels mass incarceration, legal advocates say, because people stuck in jail with a bail they can't afford are more likely to enter guilty pleas in exchange for a promise of release. Research in New York City found that, controlling for other factors, the likelihood of conviction jumped from 50 percent to 92 percent when people remained in jail while their cases proceeded, according to the ACLU and Color of Change report.

And anyway, Shalom said, the allegations in the Chapmans' lawsuit are "completely divorced from reality."



(Photo: Kathy Johnson/MyCentralJersey, Courier News)

"What you have to believe to think that this lawsuit is viable is that under the old money bail system, no one ever got out of jail and committed a new crime," he said. "And we just have legions of examples that say the opposite, that show a lot of people committed new crimes while out on money bail.

"So the notion that we would have been safer if Mr. Black has been released on money bail is totally nonsensical," Shalom said, adding that Black had been arrested and released from jail roughly two dozen times under the pre-2017 bail system in New Jersey.

The lawsuit also alleges that with the implementation of the new bail reform law on Jan. 1, “throngs of violent criminals were released into the streets of New Jersey’s neighborhoods.”

New Jersey’s pre-trial jail population has decreased 20 percent, to about 5,700 people, since the beginning of the year, according to court statistics. But that drop has been matched not by an uptick in violent crime, but rather by a nearly 17 percent decrease in the first six months of 2017, compared with the same period last year, according to data from the New Jersey State Police.

Clayton pointed out that both violent crime and the jail population were declining prior to this year, so factors other than bail reform are at play.

An imperfect system

Even bail reform’s staunchest defenders acknowledge that New Jersey’s new system is not perfect and will have to undergo tweaks. After police and elected officials spoke out earlier this year about concerns they had with the system, for example, the state attorney general in May issued tougher guidelines that instructed prosecutors to seek detention for defendants accused of serious gun crimes, as well as those with a history as a sex offender or on parole or pre-trial release for another crime.

The state Supreme Court, too, adopted changes so that defendants charged with any of 13 weapons offenses automatically receive a “no release” recommendation during their pre-trial detention hearings.

The outcome of those changes, and whether they win over critics, will be closely watched by reformers in other states. The New Jersey example was recently cited in a ruling by a federal judge in Houston that overturned the county’s bail system, and several other states are either changing or have proposed changes to their bail laws.

“People recognize that we have a mass incarceration crisis in this country and that part of it is driven by our pre-trial population,” Shalom said. “So people who want to confront that crisis are looking at ways in which our system of money bail has perpetuated and grown injustice.”

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TO FIX ‘UNFAIR’ BAIL SYSTEM, WILL CALIFORNIA COPY KENTUCKY?

By [Samantha Young](#) | Aug 9, 2017 | [JUSTICE](#)

“It’s rare that a California lawmaker seeking a policy model would turn to Kentucky. But with the Legislature on summer recess, that’s precisely what Sen. Bob Hertzberg is doing.

The mission: travel to the Bluegrass state to investigate how Kentucky gets its defendants awaiting trial to show up for court dates and keep them from committing crimes—all without locking them up. Civil rights advocates point to Kentucky as a shining example of reform, and Hertzberg, a Democrat who represents the Los Angeles suburb of Van Nuys, is convinced California ought to take notice.

He contends California’s use of bail has spun out of control—costing five times the national average, and leaving thousands of poor people behind bars awaiting trial while the rich go free.

“The system is upside down,” Hertzberg says. “It’s unconstitutional, and I think there are people using excessive bail to keep people in jail.”

Historically, courts used bail to ensure people charged with a crime showed up for court. Then judges began to levy high bail as a way to increase the odds that people charged with serious crimes remain locked up until trial. In California, anybody who can’t afford bail can contract with a bail bond company, which then guarantees their bail according to a county bail schedule that

lists amounts by crime. In return, the arrestee pays the bail company a 10 percent nonrefundable fee.

Hertzberg is carrying controversial [legislation](#) that would require all of California's 58 counties to create "pretrial services agencies" to screen the arrested and conduct a formal risk assessment. Local magistrates, judges or court commissioners could use that guidance to recommend release, as opposed to bail, if the accused isn't found to be a danger to society or a flight risk.

The premise: A thorough evaluation and supervision could allow someone—while awaiting trial—to reunite with family and return to work rather than sit in jail.

Civil liberties groups champion the risk assessment as a way to objectively and, they say, scientifically determine who can be safely released. But law enforcement, judges and the bail industry argue the bill would burden courts, saddle counties with huge costs and is far too lenient on criminals.

"SB 10 creates a new complex structure," Elizabeth Ratinoff of the Los Angeles County District Attorney's office told lawmakers last month. "It is fair to some, but not to others, and the language that says all of that is confusing."

Sacramento County Superior Court Judge Steve White, president of the Alliance of California Judges, said the bill would result in "a near shutdown of the court system" and pose "a serious risk to public safety."

"We recognize that not everyone has the ability to post bail pending trial. We address that concern by adjusting bail amounts and releasing defendants on their own recognizance or on pretrial release under appropriate circumstances," White wrote in a May [letter](#) opposing the bill.

Critics contend that California's current bail system is a hardship for many, and is particularly punitive to the poor.

"The whole criminal process is class discrimination," says Malcolm Feeley, a law professor at the University of California, Berkeley, who has written about bail reform and argues the poor are the ones most often arrested and charged with crimes.

A handful of states don't allow private bail bonds, opting for supervised release or bonds with the court for eligible defendants. California's Constitution guarantees a person's right to bail, but excessive bail is prohibited by the U.S. Constitution.



The concern about excessive bail, along with jail overcrowding, have led a growing number of states and local jurisdictions to embrace the risk assessment idea. Those who have created their own pretrial services include not only Kentucky but also Arizona, Colorado, Virginia and Washington, D.C.

Lawmakers in Illinois, Connecticut, Maryland and New York have legislation pending to remake the money bail system. Meanwhile, class action lawsuits targeting bail have been filed in Illinois, Louisiana, Texas, Georgia, Tennessee, Missouri, and Massachusetts, according to the Equal Justice Under Law, a nonprofit civil rights organization.

In the U.S. Senate, California Democratic Sen. Kamala Harris and Kentucky Republican Sen. Rand Paul teamed up to introduce a federal bail reform bill.

“We’ve worked for years to get people to acknowledge there was something wrong with the money bail system,” said Cherise Fanno Burdeen, chief executive officer of the Pretrial Justice Institute, a nonprofit Maryland advocacy group. “All of a sudden, it’s like a fire hose. The movement is washing...across the country.”

A 2015 [report](#) by the Public Policy Institute of California that found that even with California’s median bail at \$50,000—five times the national average—the state was no better than the rest of the country at getting defendants to appear in court or keep them from committing a crime.

Across the state’s jails, there are twice as many “unsentenced” inmates than those who are serving a sentence after conviction, according to Jail Profile Survey data made available by the [Board of State and Community Corrections](#) website. A query showed 48,349 un-sentenced inmates compared to 25,111 who had been convicted as of December 2016, the most recent figures available.

Nationally, [434,600](#) un-convicted felony inmates sat in jails across the country, according to 2015 figures released by the U.S. Bureau of Justice Statistics. That number (which excludes misdemeanors) is high, in part, because judges nationwide have become more reliant on bail. The percentage of pretrial releases with financial conditions [climbed](#) from 37 to 61 percent between 1990 and 2009.

It’s hard to know, however, exactly how many people are in jail because they can’t afford bail. Neither state nor federal authorities collect such statistics.

Nine in 10 defendants nationwide are in jail because they have not posted bond, according to one [figure](#) circulated by the Pretrial Justice Institute.

But the Judicial Council of California [contends](#) that “a significant portion” of people in jail are there because of probation, parole or immigration holds, or because they’ve skipped previous court appearances.

“It’s a movement that’s being pushed on our voters and citizens with a false narrative,” said Topo Padilla, president of the Golden State Bail Agents Association. “This is being pushed as if poor people are languishing in jail. The reality is that people who are being charged with a crime are languishing in jail.”

Rather than create a new government-run entity, Padilla argues the Legislature should start with a simple reform: Reduce California’s high bail amounts, something bond agents say they tried to get through the Legislature about six years ago.

The state Senate passed Hertzberg's bill in May over the objections of Republicans who defended the bail system as critical to the courts and law enforcement.

"This is another piece, if you will, in the destruction of the criminal justice system in this state," Republican Sen. Jim Nielsen of Gerber argued in a floor debate.

The bill faces an uncertain future in the Assembly, which narrowly rejected a similar bill by Democratic Assemblyman Rob Bonta of Oakland earlier this summer. Bonta and Hertzberg have since worked together to amend SB 10 in hopes of addressing critics' concerns—giving judges more discretion, ensuring victims are given notice before a defendant is released, and allowing a prosecutor to freeze a defendant's assets in certain cases.



California state Sen. Robert Hertzberg

Hertzberg pledged to further amend the bill to address law enforcement concerns about people charged with violent felonies who could be released under the current version of the proposal. It already prevents the release of people accused of certain violent crimes, such as murder or a violent sexual assault. And it actually strengthens existing law to ensure that people charged with serious crimes can't post bail without a hearing.

"I don't want to write a law that's not going to work or isn't tough on crime," Hertzberg said. "There's a problem that exists, and I want to fix it."

One county that has an existing pretrial services department is Santa Clara County. It estimates saving the county roughly \$265,000 a day in detention costs by supervising roughly 1,380 defendants in the community.

The cost to supervise a released defendant runs about \$13 a day, says Aaron Johnson, director of the Office of Pretrial Services for Santa Clara County. That's much less than the \$205 a day it would cost to put them in a Santa Clara jail. And the department reports a 96 percent success rate of supervised defendants showing up for court dates, and a 99 rate of defendants remaining crime-free until trial.

"We have the numbers, we have the ability to show the outcomes that people were skeptical of," Johnson said. "There are better alternatives to keeping people in jail."

Back in Kentucky, where a pretrial services program took effect in 1976, roughly 90 percent of defendants make all future court appearances and 92 percent don't get rearrested, according to the program's executive officer, Tara Boh Blair.

Still, the upfront costs to create these entities in each county concern some lawmakers.

“I just don’t see without spending a lot of money, a lot of money, in big counties how this works. And in small counties, to be honest,” said Democratic Assemblywoman Lorena Gonzalez Fletcher of San Diego, who chairs the Assembly Appropriations Committee where the bill will be heard next.

She’s warning the bill’s authors “to sit down and do the hard work” to modify the measure so it can win the Assembly support necessary to land on the governor’s desk.

Samantha Young is a contributing writer at CALmatters.org—a nonprofit, nonpartisan media venture explaining California policies and politics.



Homicide

Murder victim's mother sues New Jersey governor over 'flawed' bail reform



By **Cristina Corbin** • Published August 10, 2017 • Fox News



June Rodgers in front of a picture of her son Christian.

On a Sunday last April, 26-year-old Christian Rodgers was returning from a convenience store in New Jersey when he was shot and killed by a convicted felon who had just been released from jail under the state's new bail reform laws.

The victim's mother, June Rodgers, is now suing New Jersey Gov. Chris Christie over what she says was a failure to protect her son. She claims the murder would never have happened had the state not relied on a controversial computer program to assess the probability a person will re-offend.

"My son was shot 22 times as he tried to run away from this man," Rodgers said through tears in an interview Wednesday.

"He was a really good kid. He was kind hearted," Rodgers told Fox News, saying she was "shocked" upon learning the alleged shooter had been released from jail days before following an arrest on a gun charge.

"There was hurt all over again," she said. "I got the sense that my son was killed for nothing and that it could have been prevented. Had they still had the old system, someone would have been keeping an eye on this guy."



Governor Chris Christie of New Jersey in Washington, June 16, 2017 (REUTERS/Joshua Roberts)

The lawsuit's defendants include Christie and the state's attorney general, Christopher Porrino. The suit says the shooting suspect, 30-year-old Jules Black, was not detained because of bail reforms that went into effect earlier this year.

Supporters of the reforms say they were enacted as a way to keep violent criminals detained until trial while providing poor, low-level offenders the chance to be freed. But critics say it has led to some people being hastily released because they weren't considered a threat and then later rearrested on new charges.

At the heart of the Rodgers lawsuit is a computer program that purports to accurately predict the probability a person who has been arrested will commit another crime or fail to show up for court. The risk assessment tool -- a key feature of the bail reform that took effect on January 1 -- was designed by the Arnold Foundation and championed by Christie.

Jeff Clayton, executive director of the American Bail Coalition, claims that using a computer program to make such predictions "violates the common sense test."

"The tool is sacrosanct in a lot of ways," Clayton told Fox News. "This is an over reliance on science and the algorithm to predict human behavior."

"The problem here is that a human being did review the case but relied instead on a computer rather than what I would consider the obvious facts," he said.

Duane "Dog" Chap, the former star of "Dog the Bounty Hunter," announced last week that he is joining the legal effort to have New Jersey's new bail rules tossed out. When questioned about the pending lawsuit, Christie told a reporter, "Bring it on."

The Republican governor said the reforms are meant to ensure public safety while also preventing low-risk offenders from remaining detained because they can't afford bail.

"Obviously the bail bond industry makes a lot of money off poor people. I mean, it's disgraceful, and we've changed the system now so that if you're — if you are poor in this state and are charged with a crime you should not have to stay in jail for being poor," Christie said during an Aug. 2 press conference. "Being poor is not a crime."

"Now, are there going to be times when people who get out of jail prior to trial commit other crimes? Yes, but is that a justification for mandating that every person stay in jail? I say no ... I welcome the lawsuit," he said.

Jules Black, meanwhile, has been charged with murder and weapons charges stemming from Rodgers' murder. He remains jailed, and his attorney has maintained his client's innocence, according to the Associated Press.

Mario Williams, a lawyer for the Rodgers family, said he hopes the lawsuit might lead to change within the state's current bail reform measures.

"The issue is not whether Jules Black would have gotten out under the old bail system. The issue is that Governor Christie and the Arnold foundation forced the public to accept a risk assessment program that assesses the risk, to the public, of violent felons such as Jules Black at near zero," Williams said, claiming Black had been incarcerated more than 15 times on sexual assault and gun charges.

"New Jersey tax payers have to ask Christie one simple question: how could you have our best interest at heart by promoting a risk assessment program that failed to take into account charges such as sexual assault and previous gun charges?" he said.

Cristina Corbin is a Fox News reporter based in New York. Follow her on Twitter [@CristinaCorbin](https://twitter.com/CristinaCorbin).



Rand Paul Abandons Market Principles In His Attempt To Nationalize Bail Bonds

Published on August 7, 2017 in News by Shane Trejo

Sen. Rand Paul (R-KY) is known for his support of free market principles, but that apparently changes entirely when it comes to bail. He is championing legislation alongside Sen. Kamala Harris (D-CA) that would use federal grants to effectively destroy the bail bonds industry, putting thousands of small businessmen at risk of losing their livelihoods.

“Our justice system was designed with a promise: to treat all people equally,” Harris was quoted as saying in a news release. “Yet more than 450,000 Americans sit in jail today awaiting trial and many of them cannot afford ‘money bail.’ In our country, whether you stay in jail or not is wholly determined by whether you’re wealthy or not — and that’s wrong.”

Harris and Paul **published a joint op/ed** in the *New York Times* where the lawmakers referenced the policies of New Jersey as an example of what their proposed federal grant money would influence states into adopting. New Jersey has become a stunning example of the unintended consequences of government solutions to the supposed bail problem.

NBC New York **conducted an early expose** of what happened after New Jersey effectively dismantled the bail bonds system in their state. What they found was a tremendous lack of

accountability, increased government control and spending, and the empowering of criminals to commit more offenses. From the report:

“On January 1 of this year, New Jersey overhauled its criminal justice system and virtually eliminated the old cash bail structure, replacing it with one that relies heavily on a mathematical risk assessment formula...”

From January 1 through March 31, 10,193 eligible defendants were processed. Preventive detention was ordered for only 12.4%. Nearly 85% were given pretrial release, some with conditions...

Outraged mother June Rodgers of Millville blames bail reform for the murder of her son. He was shot to death on a street in Vineland in April after a verbal dispute with a man driving a car. Cops arrested career criminal Jules Black, who’d been picked up on a separate gun charge four days before, and released with no bail...

The state has created a Division of Pretrial Services to monitor defendants. The funds come from court fees. There have been 173 employees hired so far. The projected spending for next fiscal year is expected to be in the range of \$36 million to \$38 million dollars.

The Office of Administrative Courts was unable to provide any statistics on the number of released defendants who have re-offended since January 1, or the number of those who have failed to appear for scheduled court dates.”

Under Paul’s proposal, \$10 million in federal grant money would be earmarked toward coercing states across the country to adopt these policies. Matt Maddock, a conservative activist and bail bondsman from Michigan, has lobbied on behalf of his industry for many years. He believes that Paul’s plan is misguided and unbecoming of the tea party values that got him elected to the Senate in 2010.

“Outlawing bail bond agencies and eliminating money bail is not the solution to the problem of the criminally accused from languishing in jail unable to post bail,” Maddock said. “User-funded bail bond agencies are the only mechanism that effectively reduce the number of fugitives in our communities because they have ‘skin in the game,’ and they go out and bring fugitives back into custody.”

The streets may not be safer, government may not be limited, and small businessmen may have to worry about their livelihood, but at least Paul will have a decent photo-op with a Democrat and series of media appearances to boost his political aspirations. The legislation is not expected to pass.

The New York Times

N.Y. / Region

New Jersey Is Front Line in a National Battle Over Bail

By [ALAN FEUER](#)

AUG. 21, 2017



The former star of the television show “Dog the Bounty Hunter,” Duane Chapman, far left, joined the family of Christian Rodgers in Trenton last month to announce a suit challenging the law overhauling New Jersey’s bail system.

Credit Bruce Shipkowski/Associated Press

Less than a year after New Jersey established a sweeping new law that all but eliminated cash bail, the state has found itself facing a challenge familiar to others that have overhauled their bail systems: an energetic legal attack from the bail industry.

In June and July, two lawsuits were filed in Federal District Court in New Jersey challenging the statute, the Criminal Justice Reform Act, which took effect on Jan. 1. While the suits have taken different legal tacks, they do have something in common: one was filed by a large corporate bail

underwriter and the other has received support and publicity from professional bail agents. Both parts of the bail industry have said that their profits have plummeted since the law took effect.

New Jersey is among a handful of states where courts and government officials have begun in recent years to modernize — and in some cases, abolish — the assignment of cash bail, which critics say discriminates against defendants, many of them black and Latino, who cannot afford to pay. The New Jersey law, which was designed to keep the poor from languishing in jail — especially for minor offenses — has put the state at the forefront of a growing national movement toward major change and was notable for having the support of its Republican governor, Chris Christie.

But the movement has occasioned resistance from the bail industry, which has launched an assertive effort to preserve the practice — and its own commercial interests. The Bail Bond Association of New Mexico, for instance, filed suit against the state on July 28, challenging a set of State Supreme Court rules governing bail that were passed just weeks before.

In January, Paul D. Clement, a lawyer who once served as United States solicitor general, testified on the industry's behalf at a hearing in Maryland against that state's new rules. Lawyers for the industry have also submitted amicus briefs in recent months in cases in Atlanta, Houston, New Orleans and San Francisco, trying to stop civil rights groups from suing in the federal courts to overhaul bail in those cities.

Concern about the changes has reached such a pitch among the country's bail bondsmen that the president of the Professional Bail Agents of the United States, an industry trade group, issued what she called "A Declaration of War" in the group's August newsletter.

"We have the responsibility to stand against the forces of tumult and division," wrote the president, Beth Chapman, who is married to the former star of the TV show "Dog the Bounty Hunter," Duane Chapman. "We must stand united and strong, willing to fight back and wage war against the special interests who would destroy law and order in this country to advance their radical agenda."

In the middle of the fight, the two suits in New Jersey have attracted attention not only because they are especially aggressive, but also because they may become a bellwether for other states that are trying to fend off attacks on bail reform.

"I think the reason you're seeing such intensity by the bail industry to undermine reform in New Jersey is that it will have an effect on the national landscape," said Alexander Shalom, a lawyer for the American Civil Liberties Union who is helping state officials defend themselves in one of the cases. "The industry is upset about losing business in New Jersey. But the bigger problem is: If there's successful reform in New Jersey, it can be replicated elsewhere."

The first New Jersey suit was submitted by Mr. Clement in June on behalf of the Lexington National Insurance Corporation, a bail underwriter in Maryland, which, like others in the field, assumes the ultimate financial risk from local bail bondsmen if defendants do not appear in court. Filed as a class action, its named local plaintiff is Brittan B. Holland, a New Jersey man

who was charged in April with assault after being accused of beating up two patrons of a tavern in Winslow Township during a fight over a football game.

According to the suit, Mr. Holland wanted, and had the means, to post cash bail with the help of a bondsman, but under the new state law he was released from jail after being fitted with an electronic ankle bracelet — or what the suit referred to as “a modern-day scarlet letter.” This led to “severe deprivations of liberty,” the suit claimed, including home detention, the fact that the government could track Mr. Holland 24 hours a day and a requirement that he report to court officials every two weeks.

The second suit was filed on July 31 by June Rodgers, whose son Christian Rodgers died in April after being shot 22 times in Vineland by a felon who had been released on bail for a weapons violation. In the suit, Ms. Rodgers claimed that the state’s new bail law “created a system where African-Americans in New Jersey,” like her son, received “disparate treatment.” The suit also blamed Governor Christie and the Laura and John Arnold Foundation, a social-justice organization that helped draft the law, for violating her 14th Amendment due process rights, including “the right to companionship with her son.” Oral arguments will be heard in the case in Federal District Court in Camden on Tuesday.

The day the suit was filed, the Chapmans appeared at a news conference in Trenton announcing the litigation. Mr. Chapman stood in front of the cameras attacking New Jersey’s “dangerous, fake reform” of bail, which, he said, had been in effect for 200 years. Ms. Chapman added that “people are not in jail because they’re poor — they’re in jail because they broke the law.” In pursuing her case against the state, Ms. Rodgers is being represented by Nexus Caridades, a pro bono law firm that is funded by a company called Nexus that offers services to immigrants who need bail.

Jeff Clayton, the executive director of the American Bail Coalition, a national organization of bail underwriters, questioned the premise of the changes by saying that the various laws and rules across the country were damaging public safety — a notion that officials in New Jersey and elsewhere have disputed. Mr. Clayton also said that there were constitutional problems with the overhaul efforts not only under the 14th Amendment, but also under the Fourth Amendment, which prohibits unreasonable searches and seizures, and the Eighth Amendment, which guards against “excessive bail.”

But Alec Karakatsanis, a lawyer for Civil Rights Corps, a nonprofit organization that has been involved in several of the bail cases, called the cash-bail system “a catastrophe,” adding, “It’s enormously unjust and enormously costly.”

“And now that’s it being scrutinized by people and the government,” Mr. Karakatsanis said, “I don’t think the industry’s efforts to fight this movement will succeed.”

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Homicide Victim's Mother Challenges N.J.'s New Bail Policy

The man who allegedly killed her son wasn't required to post bail when he was released on an earlier charge, leading to his death, she says

By [Corinne Ramey](#)

Aug. 21, 2017 5:14 p.m. ET

The mother of a New Jersey homicide victim has teamed up with the bail-bond industry to bring one of the first legal challenges to the state's move to eliminate bail.

The bail overhaul stems from legislation signed by Republican Gov. Chris Christie in 2014 and a constitutional amendment later approved by voters. The changes have drawn praise from criminal-justice advocates, though the bail-bond business has seen them as an existential threat.

On April 5, Jules Black, 30-years-old, was driving in Cumberland County, N.J., when he was pulled over for using his cellphone, according to police. The officer smelled marijuana and, after searching the car, arrested him for possessing a handgun, police said.

After a court hearing, Mr. Black was released—and, in keeping with the new law, wasn't required to post bail. Four days later, police said, he fatally shot 26-year-old Christian Rodgers.

Mr. Black pleaded not guilty. A lawyer representing him didn't respond to requests for comment.

Mr. Rodgers's mother, June Rodgers, 50, of Millville, N.J., said some family members told her "this bail reform thing was going on and they had let [Mr. Black] out with no bail, no bond or anything."

"I felt that system failed my son," she said.

Under the old system, New Jersey residents had a right to bail; even defendants accused of the most serious crimes couldn't be held without bail. But in recent years, questions of fairness arose

because low-income defendants who couldn't afford bail were held in jail until trial, while wealthier defendants, including those accused of the same crimes, went free because they had the means to pay the bail.

Today, judges rarely assign bail.

Judges set bail for 19 of nearly 22,000 defendants from January through June, said a spokesman for the state's court system. The number of people in jails awaiting trial on June 30 was about 5,700, down from about 8,800 two years earlier.

Under rules that went into effect in June, the court recommends those with serious gun charges be held in jail.

The state's bail overhaul hasn't been welcomed by those who work in the bail-bond industry, which typically charges defendants a fee or collateral in exchange for posting bail.



Jules Black was released from jail, then allegedly shot a man; the victim's mother has sued over changes made to New Jersey's bail system. Photo: New Jersey State Police

After her son's death, Ms. Rodgers scoured the internet, where she found an interview with Michelle Esquenazi, who owns a bail business in New York and is nicknamed the "Bail Bond Queen." She then met others in the industry, eventually connecting with Beth and Duane "Dog" Chapman. Ms. Chapman, president of the trade group Professional Bail Agents of the United States, and Mr. Chapman, a reality TV star known as "Dog the Bounty Hunter," are longtime industry advocates.

The Chapmans connected Ms. Rodgers to Libre by Nexus, a Virginia company that bails out immigrants from detention centers. Nexus Caridades, a law firm funded by the company, took her case.



Christian Rodgers, 26 years old, allegedly was fatally shot by Jules Black in New Jersey this year. Photo: June Rodgers

The resulting suit, filed in July, names as defendants Mr. Christie, state Attorney General Christopher Porrino and the Laura and John Arnold Foundation, a nonprofit that developed the risk-assessment algorithm used to help determine if defendants should be jailed.

The suit argues the risk assessment is faulty and thereby responsible for Mr. Rodgers's death. After the assessment went into effect, "throng of violent criminals were released into the streets of New Jersey's neighborhoods," the suit claims.

State police data show that during the first seven months of this year, violent crime in New Jersey was lower compared with the same period in 2016.

Earlier this month, Mr. Christie said he welcomed the suit. "Obviously the bail-bond industry makes a lot of money off poor people," he said. "I mean, it's disgraceful, and we've changed the system now so that...if you are poor in this state and are charged with a crime you should not have to stay in jail for being poor."

A spokeswoman for Mr. Porrino declined to comment. The Arnold Foundation, in a written statement, called the suit meritless.

Proponents of the overhaul note that, under prior rules, Mr. Black could have paid bail and been released.

The bail-bond industry is concerned that the changes in New Jersey could spread. "I would hope we can stop this in other states," said Mike Donovan, chief executive of Nexus. Too many

people are incarcerated, but changes should be made to sentencing laws, not to rules for those awaiting trial, he added.

Washington, D.C., has eliminated cash bail, and Kentucky has decreased its bail usage. Lawmakers in other states, including California, have advocated for legislative changes that would decrease the number of defendants given bail.

In a newsletter to the trade association earlier this month, Ms. Chapman wrote that the “we must fight to protect our industry, our livelihoods, and the communities we live in and serve,” she said.

“This is bail’s ultimate stand,” she added.

Others contend the industry is using Ms. Rodgers’s tragedy to protect its bottom line.

“For decades this was one of the best businesses you could be in,” said Alec Karakatsanis, a civil-rights lawyer who has fought against the bail system. “It was extremely profitable, with no consumer regulation—essentially like payday lending on steroids.”

As for Ms. Rodgers, she says she is merely fighting for her son. “Something has to be done about it,” she said.

Write to Corinne Ramey at Corinne.Ramey@wsj.com



The Ridgewood Blog



photo former U.S. Solicitor General Paul Clement

US District Court to Hear Bail Case of NFL Fan in Test for New Jersey's current bail reform laws

August 22, 2017

the staff of the Ridgewood blog

Camden NJ, in a test for New Jersey's current bail reform laws a US district court will hear oral arguments in the on Tuesday, August 22 at 3:00 PM in the case of Holland v. Rosen.

The case concerns a Dallas Cowboys football fan involved in a bar fight, who claims he was denied his constitutional right to bail by a New Jersey judge.

Filed by former U.S. Solicitor General Paul Clement on behalf of Brittan Holland and Lexington National Insurance Corporation, which represents others in Holland's situation, the suit maintains that New Jersey's current bail reform laws are illegal. Clement, widely regarded as one of the greatest constitutional litigators in recent history, contends that bail is guaranteed in the Eighth Amendment of the Constitution.

The case brings a different perspective to New Jersey's controversial bail reform laws which took effect on January 1. The outcome of the case may have an impact on bail laws throughout the country.

The class action suit of Holland v. Rosen will be heard in oral arguments in the United States District Court for the District of New Jersey before Judge Jerome B. Simandle.

Dallas Cowboys football fan Brittan Holland was arrested and charged following an argument and fight with a Philadelphia Eagles fan in Winslow Township on April 6. He was subsequently ordered to be released wearing a GPS ankle monitor pending his trial.

His release imposed upon him by these specific conditions, Holland claims he was denied the option of bail, to which he should have been guaranteed in the Eighth Amendment of the Constitution. Because he was forced to wear the bulky ankle bracelet — “a modern-day scarlet letter,” the suit reads — his “liberty is sharply curtailed...he cannot shop for food or basic necessities and cannot take his son to baseball practice.”

The suit contends that this action reflected the unlawfulness of New Jersey's bail reform laws, which took effect on January 1. Intended to make things fairer for defendants who lack the financial resources to be bailed out, the new system calls for judges to utilize a risk assessment tool to determine whether to hold defendants in jail or release them on a simple promise to appear.

Former U.S. Solicitor General Paul Clement filed the suit on behalf of the fan and Lexington National Insurance Corporation, which represents others in Holland's situation. Clement is expected to be present for the hearing.

Bar fight sparks legal challenge to N.J. bail overhaul

Updated on August 22, 2017 at 11:57 AM Posted on August 22, 2017 at 11:37 AM

By **S.P. Sullivan**
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NJ Advance Media for NJ.com

CAMDEN -- New Jersey's [bail system](#) overhaul, held up as a national model by criminal justice reform advocates and derided by [bail bondsmen](#), faces a constitutional challenge as a federal judge on Tuesday weighs arguments in a lawsuit filed against the state.

In January, New Jersey virtually eliminated cash bail, replacing it in most cases with an arrangement where judges, guided by a risk assessment algorithm, can order defendants locked up until trial or subjected to varying degrees of monitoring.

The move brought the Garden State's justice system under the national spotlight as other states consider similar changes.

Advocates say a cash bail system is unfair because it keeps low-level defendants locked up because they cannot afford meager bail amounts while dangerous criminals with means go free. The new system takes financial resources out of the equation.

But the bail bonds industry, which has fought efforts to eliminate cash bail across the country, has waged a public battle against the changes here in New Jersey, highlighting cases where defendants accused of sex crimes and gun offenses have been released under the new system only to be arrested on new charges.

It has also funded legal challenges, including the case on the docket in U.S. District Court in Camden on Tuesday, which [started with a bar fight](#) over the Philadelphia Eagles and the Dallas Cowboys.

A Camden County man, Brittan Holland, was arrested on aggravated assault charges after he and his father allegedly left two men bloodied in a parking lot following an argument over the football teams outside Joe's Tavern in Sicklerville, according to local police.

He was later ordered to wear a GPS monitoring bracelet while awaiting trial and submit to weekly check-ins with the court.

Lexington National Insurance Corporation, a Maryland-based bail underwriting company that does business across the country, took up Holland's case, hiring former U.S. Solicitor General Paul Clement to file a class-action lawsuit challenging the constitutionality of refusing defendants the opportunity to post bail.

The suit argues New Jersey's new system violates the Eighth Amendment of the U.S. Constitution, which protects against excessive bail amounts. It asks the judge to roll back some of the changes implemented under the new system, including allowing more mid-level defendants, like Holland, to post bail.

In court papers, lawyers for the state argue such a move would "return New Jersey to the discarded, discriminatory system that allowed dangerous defendants charged with serious, violent crimes to evade pretrial detention even when they posed a manifest danger to the community."

Oral arguments in the case are scheduled for Tuesday afternoon in front of Judge Jerome B. Simandle.

S.P. Sullivan may be reached at ssullivan@njadvancemedia.com. Follow him on [Twitter](#). Find NJ.com on [Facebook](#).

New Jersey Law Journal

Injunction Sought in Insurance Company's Challenge to Bail Reform

Charles Toutant, New Jersey Law Journal

August 22, 2017



New Jersey Attorney General Christopher Porrino

A challenge to New Jersey's bail-reform measures reached a critical phase on Tuesday as a federal judge in Camden heard arguments on an insurance company's bid for a preliminary injunction against implementation of bail reform in New Jersey.

The Criminal Justice Reform Act, which has come under constitutional challenge from Lexington National Insurance Corp., which has contended its surety business has dwindled under the new law, and Brittan Holland, a Sicklerville man who was placed on home detention and ordered to wear a monitoring device after he was charged with assault. The suit was brought on behalf of a class of people who are unable to get cash bail under the act, which went into effect Jan. 1. Paul Clement, who served as U.S. solicitor general under President George W. Bush, and now is with Kirkland & Ellis in Washington, is on the team representing the plaintiffs.

Defendants in the suit are Attorney General Christopher Porrino, Camden County Prosecutor Mary Eva Colalillo and Kelly Rosen, a Superior Court of New Jersey employee in Camden who enforced the act against Holland.

To support their bid for a temporary injunction, the plaintiffs asserted that they are likely to succeed on the merits and that plaintiffs will suffer irreparable harm without injunctive relief. "This case turns on first principles of constitutional law. There is no more basic constitutional protection than the right of ordinary, law-abiding citizens to be free of government custody, detention or other forms of physical restraint," they said.

But the state said a preliminary injunction is not warranted because Holland is unlikely to succeed on the merits and that the federal court should abstain from interfering with his ongoing state prosecution.

The suit, *Holland v. Rosen*, filed on June 14 in federal court in Camden, is not the only challenge to bail reform in New Jersey. On July 31, a Cumberland County family filed a constitutional challenge to the system in federal court on behalf of Christian Rodgers, 26, of Millville, who was allegedly shot and killed by a man who was released from custody under auspices of the new system. Rodgers' family have joined forces with television personality Duane Chapman, better known as "Dog the Bounty Hunter," to oppose New Jersey's bail revamp.

In the Holland case, the plaintiff was charged with aggravated assault after he got in an argument about the Philadelphia Eagles at Joe's Tavern in Winslow. According to the state, Holland's victim suffered multiple facial fractures in the assault, and he fled the scene but was found at home wearing clothing covered in fresh blood.

The Camden County Prosecutor's Office moved to seek pretrial detention due to the severity of the attack and Holland's prior conviction for simple assault, the state said. Holland was represented by a public defender when he negotiated the pretrial detention terms, and he accepted the terms in an appearance before a Superior Court judge, the state said. He was placed on house arrest and ordered to wear a monitoring device on his ankle instead of posting bail. He is required to report to pretrial services every two weeks.

Holland says he is deprived of the ability to shop for groceries or to spend time taking his son to baseball practice. In addition, he endures pain and discomfort from the bulky device on his ankle, must sit next to an outlet for multiple hours a day to charge the monitor, cannot swim in a pool, and suffers social stigma if he exposes his ankle bracelet in public.

The plaintiffs have no quarrel with the state's objective of reducing the number of detained defendants who cannot afford bail, according to their complaint.

"But the state can achieve that goal while offering both monetary bail and other conditions, as appropriate," the complaint states.

Lexington National, based in Cockeysville, Maryland, says on its website, "bail is our only business and we have years of retail bail experience." It writes in the complaint, "the CJRA largely eliminates the business of commercial sureties like plaintiff Lexington National, which help criminal defendants obtain their pre-trial freedom without infringing on their civil liberties."

The suit brings counts for denying the right to bail, in violation of the Eighth and Fourteenth Amendments; deprivation of liberty without due process, in violation of the Fourteenth Amendment; and unreasonable search and seizure, in violation of the Fourth and Fourteenth Amendments. It seeks a declaration that the CJRA violates the constitutional rights of Holland and the other class members, as well as preliminary and permanent injunctions against its enforcement, as well as compensatory damages and costs of suit.

The state, on behalf of the defendants, has filed a motion to dismiss in lieu of an answer. The state argues that Holland and the insurance company lack standing to bring claims against the defendants. Holland lacks standing because imposition of bail would not redress his alleged injury—a court would still be free to impose nonmonetary pretrial release conditions, the state said. And Lexington National lacks standing because it doesn't have a particularized injury of its own, as opposed to an abstract injury shared by all bail bondsmen in New Jersey, the state said.

Lexington National's invocation of third-party standing fails "because it cannot allege a constitutionally protected legal entitlement to offer bail to criminal defendants and because it cannot allege the type of close and confidential relationship between it and its clients that possibly could justify third-party standing," the state said. In addition, Holland's criminal proceeding in state court is ongoing, and he could raise his constitutional challenge to his pretrial release conditions there, the state said. The complaint "fails to state a claim upon which relief can be granted because a criminal defendant does not have a constitutional right to the 'option' of cash bail," the state argues.

Cash bail does not protect public safety, and it has a demonstrated history of harmful, discriminatory impact, the ACLU-New Jersey said in an amicus curiae brief it submitted along with the national ACLU, the National Association for the Advancement of Colored People-New Jersey Conference, the Latino Action Network and the Drug Policy Alliance.

The Attorney General's Office declined to comment on the case. Clement and his co-counsel, Michael Williams, did not return calls.

Do you have a right to bail? Critics attack N.J. bail overhaul enacted by Christie

Updated on August 22, 2017 at 10:15 PM Posted on August 22, 2017 at 7:25 PM

By **S.P. Sullivan**
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NJ Advance Media for NJ.com

CAMDEN -- In the first six months after New Jersey overhauled its criminal justice system in January, court officials say, just 17 defendants out of thousands of cases were given the option of posting bail while awaiting trial.

The low figure was no accident. The changes -- championed by state officials including [Gov. Chris Christie](#), the head of the state Supreme Court and a coalition of civil liberties groups -- were meant to largely replace cash bail with an arrangement where judges, guided by a risk assessment algorithm, could order defendants locked up or subjected to varying degrees of monitoring.

But a federal class-action lawsuit sparked by the case of a Camden County man [ordered to wear a GPS ankle bracelet after a bar fight](#) is seeking to roll back some of those sweeping changes, arguing the right to post bail is enshrined in the Eight Amendment to the federal constitution.

Oral arguments in the case were held Tuesday at U.S. District Court in Camden.

Funded by players in the bail bonds industry, which has seen its business model threatened by the overhaul, the suit asks the judge to put the brakes on New Jersey's move away from cash bail.

The case is being watched across the country as other states debate similar reforms. The New York Times [reported this week](#) that bail bonds groups had mounted legal challenges to bail system changes in Maryland, Texas and California, among other jurisdictions.

Lawyers for the state Attorney General's Office on Tuesday asked Judge Jerome B. Simandle to toss the suit, arguing New Jersey's new system is far fairer because it prevents poor people from being locked up because they can't afford bail while allowing more dangerous defendants to be held or at least monitored until trial.

Under the new rules, prosecutors can ask a judge to lock someone up, sparking an assessment process that weighs a defendant's risk of flight or danger to the community. Instead of bail in most cases, a judge can order a defendant jailed or released subject to certain conditions, like electronic monitoring.

New Jersey's system is modeled on similar set-ups in the federal court system and in Washington, D.C. But Paul Clement, a former U.S. solicitor general hired by the bail bonds company Lexington National Insurance Corporation, told the judge the Garden State went much further than those systems, calling it "the only jurisdiction that has definitively put bail behind this emergency glass."

"What that does, in a nutshell, is it takes something that is constitutionally protected as a liberty-preserving option and turns it into an option of last resort," Clement said, calling the elimination of bail a "blatant violation" of the constitution.

Assistant Attorney General Stuart Feinblatt argued the state and federal constitutions don't guarantee access to cash bail, but merely protect defendants against courts issuing excessively high bail amounts.

The dispute over the bail overhaul's constitutionality is a complex legal one, but it started with a fight between football fans. According to court records Brittan Holland and his father, Christopher Hoffman, were accused of beating two other men outside a Camden County bar after an argument over the Philadelphia Eagles and the Dallas Cowboys.

Holland was charged with second-degree aggravated assault as a result of the fight and a risk assessment under the new system gave him a moderate ranking, citing a previous conviction for simple assault and other factors.

A judge ordered him to wear the ankle bracelet and submit to weekly check-ins with court staff. His lawsuit argues cash bail should have been an option "on an equal footing with other release conditions."

Tuesday's hearing concerned the plaintiffs' request for an injunction which, if granted, could have far-reaching implications for criminal cases across the state.

The judge is expected to rule on the matter in the next three weeks.

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August 22, 2017

Challenging N.J. criminal justice overhaul, South Jersey man sues for right to cash bail



Brittan Holland was forced to wear a GPS monitor after he was charged with aggravated assault in South Jersey bar fight. The incident sparked a challenge to New Jersey's criminal justice overhaul. (Jérémy-Günther-Heinz Jähnick via Wikimedia Commons)

By Newsworks Staff

One of the first major challenges to New Jersey's new bail system hinges on an unlikely argument: that defendants should be able to pay cash bail if they want to.

In June Brittan Holland, of Sicklerville, sued New Jersey Attorney General Christopher Porrino and other state officials in federal court, claiming he was entitled to but denied the chance to pay bail before trial on an aggravated assault charge stemming from a bar fight on April 6.

Under the state's criminal justice overhaul, which virtually eliminated monetary bail, Holland was brought before a judge to decide whether he should be let go or kept in jail before trial.

The computer algorithm tasked with determining whether Holland might skip a court date or commit another crime while out on release recommended detaining him until trial, but a judge let Holland go with the caveats that he remain confined to his home and wear a GPS bracelet. Judges only issue cash bail in rare circumstances now.

Holland's attorneys say their client could have avoided the restrictive conditions placed upon him had he been offered the option to pay cash bail, which they say he would have fulfilled with a bail bond. "It's a price that some people are willing to pay," said Paul Clement, one of Holland's attorneys, in federal court Tuesday. "Why take away the option to pay it?"

Clement argued that the new state law requires judges to consider other options, such as home detention or GPS monitoring, before they can weigh issuing cash bail. That, he said, makes it more likely that defendants willing to pay to ensure their appearance in court will instead have a physical restriction imposed on them to achieve the same goal. "New Jersey is the only jurisdiction that has put monetary bail definitively behind this emergency glass," he said.

The state's criminal justice system overhaul, which took effect on January 1, aimed to help poor defendants who were stuck in jail on bails they couldn't afford by virtually eliminating cash bail altogether. It also allowed judges to detain defendants deemed a flight risk or a danger to the public, something that had not been allowed under the law before.

Assistant Attorney General Stuart Feinblatt acknowledged in federal court Tuesday that "monetary bail has been de-prioritized" under the state's new criminal justice system, noting that the old scheme was "unfair and discriminatory" to those who couldn't pay.

Feinblatt also said that cash bail is still appropriate for certain nonviolent defendants, but Holland is not one of them. Holland was charged with a violent felony, Feinblatt argued, and was previously convicted of simple assault.

Holland is joined in the lawsuit by co-defendant Lexington National Insurance Corporation, a Maryland-based bail bond agency that claims it has been financially harmed by the criminal justice overhaul.

Holland's attorneys were seeking a preliminary injunction that would allow their client to pay bail and rid himself of the other conditions of his pretrial release.

U.S. District Judge Jerome B. Simandle said he would rule on the matter within three weeks.

Another major challenge to the bail reform efforts in New Jersey is an ongoing federal lawsuit filed by June Rodgers, whose son, Christian, was shot 22 times and killed in Vineland on April 9th. Jules Black, who was arrested with a gun and released several days earlier, is being charged with Rodgers' murder.

THE DAILY CALLER

POLITICS

How A New Jersey Bar Fight Could Bring Down The State's Bail Laws

Anders Hagstrom

Justice Reporter

10:39 AM 08/23/2017

A federal judge may take New Jersey's Bail Reform Act out of effect after hearing arguments Tuesday from litigators representing a man convicted of assault in a bar fight.

The bail reforms have faced an onslaught of litigation from money-bail advocates since they took effect in January. Lexington National Insurance (LNI), the insurance company that filed the most recent lawsuit, argued for an injunction against the reforms Tuesday, claiming the reforms infringe on the constitutional right to bail guaranteed in the Eighth Amendment, the New Jersey Law Journal [reported](#).

New Jersey's Bail Reform Act created a risk-assessment tool to determine whether defendants should be released without needing to pay bail. Advocates argue the tool ensures equality and will help empty prisons of defendants awaiting trial on the public's dime. However, its critics — including law enforcement and bail insurance companies — argue that the tool releases dangerous criminals.

LNI's lawsuit pertains to Dallas Cowboys fan Britton Holland, who was charged with aggravated assault after a bar fight in New Jersey with a Philadelphia Eagles fan. A judge ordered that Holland be released without bail wearing a GPS tracker, per his risk assessment. Under previous policy, he likely would have been released with no limitations after paying a bail fee.

Former U.S. Solicitor General Paul Clement [filed the lawsuit](#) June 15, calling Holland's GPS tracker "a modern-day scarlet letter," and arguing that Holland couldn't even leave his home to bring his son to baseball practice. Clement argues the Eighth Amendment guarantees bail and that the new law infringes on that right.

LNI has been a constant enemy to bail reform in numerous states, fearing that a decreased reliance on money bail could run the bail bond industry out of business.

New Jersey Attorney General Christopher Porrino referenced past challenges to the state's bail reform in a statement responding to the lawsuit, which names him as a defendant.

"We intend to vigorously defend this suit, just as we have the numerous prior unsuccessful attempts to upend these reforms," Porrino said in June.

New Jersey shrugged off another lawsuit earlier this year from the New Jersey Association of Counties, which argued that the bail law constituted an unfunded mandate on the state's counties. The lawsuit was thrown out in a 4-3 decision by the state's Council on Local Mandates.

Local police have also criticized the bail law for releasing too many potentially dangerous defendants. An illegal immigrant living in New Jersey was released from a county corrections center in May under the new bail law and went on to rob two homes before he was arrested again the same week. Police contended that he should never have been released.

"With the old bail guidelines, he would have been held in the MCACC with a bail between \$10,000-\$50,000 due to the degree of his charges," police said.



THE BEAT WITH ARI MELBER 8/23/17

Can data fix America's justice system?

Sen. Kamala Harris is leading a group of politicians in both parties pushing for new legislation to reform America's bail system. Ari Melber discusses with Ato Walker, a bail reform advocate. Duration: 7:45





If you can afford to pay, should you be let out of jail? NJ court will decide

By David Matthau August 21, 2017 9:13 PM

Is paying money to get out of jail if you're charged with a crime your right as an American citizen?

Arguments will take place in U.S. District Court in Camden on Tuesday in a class-action lawsuit that aims to force New Jersey to use commercial bail bond companies, claiming the ability to buy one's way out of jail is a right guaranteed by the U.S. Constitution.

The lawsuit is in response to bail reforms that kicked in at the beginning of this year in New Jersey. The reforms largely do away with bail, and allow judges to use a points formula and their own judgment to determine whether someone poses a risk to commit another crime or flee before a trial takes place.

Advocates say the reforms level the playing field — that the decision over whether a defendant will be released is based on public safety, not how much the defendant can afford to pay.

According to Alexander Shalom, the senior staff attorney with the American Civil Liberties Union of New Jersey, in this case the bail bond industry is arguing the Eighth Amendment to the U.S. constitution "doesn't simply prohibit excessive bails, but it creates a positive right to bail in every case where you aren't being detained." Shalom and the ACLU oppose that position.

The case being heard Tuesday involves a challenge to conditions placed on a criminal defendant, Brittan Holland, who was alleged involved in a bar fight and was then released with the stipulation he could only be at work or at home. He had to wear a GPS monitor, he had to check in with a pre-trial services officer once a week and he could not have contact with the alleged victim.

The suit, filed by Holland and the Lexington National Insurance Corporation, argues that Holland is presumed innocent "under bedrock principles of American law" — and that "like all innocent people, he is preemptively entitled to liberty from any pre-trial restraint."

It says the "vast majority" of state constitutions, including New Jersey's, have historically allowed defendants the option of bail.

And it says in Holland's case in particular, a judge gave him a "modern-day scarlet letter" when he was ordered to where the monitoring bracelet, with no option through a bail system to avoid one.

"What the bail bond industry is saying is, 'No, no, he should have a right to buy his way out of supervision, to buy a right to not see a pre-trial services officer and to buy a right to avoid GPS monitoring,' and I think that's counter to common sense and counter to public safety," Shalom said.

Shalom described this argument as crazy, and said no court has upheld this kind of position.

"This case is about the right of New Jersey and, frankly, other states who are looking to New Jersey as a model, to set a system of pre-trial release that rejects the use of money," he said.

The intention, he said, is "to set a system that finds that money doesn't correlate to helping public safety and therefore says we are going to find a better way."

Shalom describes the bail reform laws that took effect earlier this year as a transformative change.

"What we used to have was a system that made decisions about whether you were in jail or out of jail while waiting for trial based on how thick your wallet was," he said. "That didn't make sense because it kept poor people who weren't a risk to public safety in jail, and it released rich people even if they were a risk to public safety."

He said the new system takes the resources question out of the equation and instead looks at risk — the risk you won't show up for your trial, the risk you'll tamper with witnesses, the risk you pose to public safety.

Shalom said bail reform is being challenged by the bail bond industry because it has dramatically hurt its business, but "our courts and frankly our prosecutors have recognized that money bail doesn't make us safer, money bail has very little correlation to whether people show up in court."

He also pointed out the bail bond industry has argued the new system presents a dire danger to the community but that has not been the case. Celebrity bounty hunter Dwayne "Dog" Chapman made that argument when he recently visited New Jersey 101.5's Bill Spadea, after announcing he'd help sue Gov. Chris Christie over the bail reforms.

Chapman argues the bail reforms put dangerous people back on the street — including Jules Black, a 30-year-old Vineland resident released without bail on a weapons charge just days before he allegedly shot and killed Christian Rodgers.

But, Shalom said, preliminary State Police data for 2017 shows violent crime is down.

Shalom noted it's not clear how long it will take the court to rule on a request for a preliminary injunction to be issued in the case. That would negate the new bail reform laws while the case was being presented

You can contact reporter David Matthau at David.Matthau@townsquaremedia.com



News

South Bay Activist Appears on MSNBC to Discuss Bail Reform

By Jennifer Wadsworth @jennwadsworth / 7 HOURS AGO



San Jose's Ato Walker has become a mouthpiece for the bail reform movement.

Three summers ago, Ato Walker had to buy his freedom after being jailed on charges that were later dropped. It took \$8,500 of his mom's pension to get him out so he could get back to work and provide for his family.

Walker has since become a prominent example of how California's for-profit bail industry unfairly punishes the poor. In op-eds, interviews and speeches at the Capitol alongside rapper-activist Common, the San Jose father of one has used his story to lobby for legislation that would replace money bail with pretrial risk assessments.

Last week, Walker appeared on an MSNBC panel to once again talk about the need for reform. Sporting a Silicon Valley De-Bug "Protect Your People" shirt, he shared the segment with American Bail Coalition spokesman Jeff Clayton and Assemblyman Rob Bonta (D-Oakland), who joined forces with state Sen. Bob Hertzberg (D-Van Nuys) on the California Bail Reform Act of 2017.

The legislation takes a cue from Santa Clara County, which enacted sweeping reforms to base pretrial incarceration on calculated risk rather than wealth. By supervising roughly 1,400 defendants in the community, the county says it saves about \$265,000 a year on detention costs. San Jose Inside reported on the systemic abuses of the local bail industry last year, when the Board of Supervisors voted to move away from the for-profit model. (Click [here](#) to read our coverage of the issue.)

Though Gov. Jerry Brown announced Friday that negotiations over the ambitious bill will have to wait until next year, Walker plans to continue his activism.

“One of my goals is to get people to look at this issue from a human perspective,” he told San Jose Inside. “We have to get people, get these representatives to realize that it’s important to do what’s right for our communities.”



Jennifer Wadsworth is a staff writer for San Jose Inside and Metro Newspaper. Email tips to jenniferw@metronews.com or follow her on Twitter at [@jennwadsworth](https://twitter.com/jennwadsworth).

Bill's News Commentary

Commentary on major news events, mostly centered on U.S., emphasis on less-covered topics

No Substance to Be Found in Senator Harris's Federal Bail Reform Legislation



billsme

August 31, 2017

B-issues, bail reform,
third party guest



NO SUBSTANCE TO BE FOUND IN SENATOR HARRIS'S FEDERAL BAIL REFORM LEGISLATION By Jeffrey J. Clayton, Executive Director, American Bail Coalition (Guest Post)

First-term U.S. Senator Kamala Harris (D-Calif.) seems intent on making a name for herself. She has attempted to portray herself as the champion of bail reform by co-authoring a bill with Rand Paul (R-Ky.) to remake the system of wholesale incarceration of inmates being held in jail. What she has actually succeeded in doing is showing the public that she is nothing more than just another self-serving hack, like so many who have preceded her in Washington.

There is no question that bail reform is needed in this country. Fortunately, there are numerous meaningful conversations taking place in many quarters with law makers and others who truly want to improve our system of criminal justice.



However, Harris' recent actions along with her past history reveal that she has no true grasp of bail reform, much less a commitment to enacting genuine change. Instead, the public has now been treated to her making a grand splash by unfurling a bill that is nothing short of ridiculous.

Harris and Paul's bill is being touted as a bi-partisan plan to fix the problem of hordes of people sitting in jail as they await trial. It proposes to provide \$15 million to U.S. Attorney General Jeff Sessions for a program for which he has voiced no support whatsoever. That amount of money is miniscule and beyond insufficient to fund anything of substance.

Moreover, Harris whiffed on a couple of other points. Her plan calls for states to report on their progress and to ensure that their risk assessment criteria are non-discriminatory. Unfortunately, the Bureau of Justice Statistics no longer creates the reports she is demanding. In fact, that very data has already shown that contrary to her stated claims, money bail really does work to guarantee appearance in court and protect public safety.

Further, Harris specified \$10 million to be expended over the next three years to enact additional reforms. These reforms are already notated in the existing federal budget – but at an amount fifty to 100 times greater than the tiny amount she delusionally put forward.

Taken as a whole, this piece of legislation is a joke and offensive to anyone who has ever been involved in the very serious matter of bail reform. Whether one wants to abolish monetary conditions of bail altogether or believes the system is just fine the way it is, it is painfully obvious that it is nothing more than a pathetic and embarrassing effort at grandstanding. Because it has virtually a zero chance of actually accomplishing its stated goals, the true reasons for its existence are painfully clear: keep the flow of donations coming in, while putting Harris and Paul's names in the news.

Perhaps most disturbing about the bill is Harris' own history concerning the issue of bail. While serving as California's Attorney General, she held contradictory positions on two virtually identical cases which dealt directly with whether or not bail in the state was legal. She chose not to defend the constitutionality of California law in the case of *Buffin v. San Francisco*, in which

it was argued that the state discriminated on the basis of economic status or the use of a set bail schedule. But she took the opposite position in the case of *Welchen v. Harris*, writing in support of California's laws. The foundation for both cases lay in the contention that the bail system created "wealth-based detention" and was, therefore, unconstitutional.

In fact, Harris did next to nothing in her role as Attorney General of California to fix the highest bail schedules in the nation or otherwise repair a dysfunctional bail market that was the root of the problem to begin with.

An examination of Harris's home state illustrates exactly why her U.S. Senate bill is nothing more than fluff. California Senate Bill 10 calls for the enactment of many of the same laws Harris is pushing for the entire nation. However, no less a source than the *Los Angeles Times* said its implementation would cost "hundreds of millions of dollars" across a number of categories — and analysts working in the state legislature agree with this determination. It should be pointed out that this is only for California. When you realize we're talking about bail reform for the entire country, one quickly comes to the conclusion that this will likely cost billions of dollars.

Suddenly, the utter insanity of the paltry \$15 million indicated in Harris' bill becomes crystal clear. Lest one think that it is the notion of bail reform that is under attack, it should be mentioned that Representative Ted Lieu (D-Calif.) has a bill of his own that addresses these same issues. However, Lieu's bill is a very well-thought-out piece of legislation. Whether or not one supports what he proposes, it certainly merits consideration – in stark contrast to Harris' effort.

Perhaps most outrageously, Harris exhumes the terrible case of Kalief Browder. She claims that he is exactly the type of individual her legislation would aid. Browder was trapped in jail because he could not post bail and was so damaged from the experience that he subsequently committed suicide after he was freed. Numerous media accounts reported that Browder was unable to raise the money to be released. However, in actuality, he was on a probation hold for three years as a juvenile, making him ineligible for bail because of a prior conviction. It is completely unrealistic to believe that his family would not have been able to raise the amount of his premium — \$300 total – if he had been able to legitimately meet the standards for bail. No matter how Harris wants to spin it, her ill-conceived legislation would have had absolutely no effect on the actual problems that caused Browder to be held needlessly. Yet she now exploits his tragic death to push for the expansion of preventative detention without the option of bail, wasting federal funds in the process. Ironically, it is this very type of system that led to Browder being stuck in jail, which resulted in his ultimate demise.

Kamala Harris had the opportunity to effect genuine change in the bail system as California Attorney General, but did nothing but meekly play both sides of the issue. Citizens who believe her to now be the vanguard of the national bail reform movement should think again. Her efforts to convince her fellow U.S. senators to fork over \$15 million to create "economic justice" is an insult to anyone who truly cares about making changes that will actually work.

About **Jeffrey Clayton**, Executive Director of the American Bail Coalition: Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver

(Posted: Wednesday, Aug. 30, 2017 at 8:30 PM EDT)



SENATOR HARRIS' FEDERAL BAIL REFORM LEGISLATION IS PROOF THAT WASHINGTON IS TRULY BROKEN

September 10, 2017 By Stephen Frank

Kamala Harris begging Washington put as many criminals on the street as possible. To assure this she is creating a Federal bail reform system. Though she is an attorney and even served as an Attorney General of California, it is obvious she failed her Constitutional law class—or maybe Obama was the professor?

She wants the U.S. Department of Justice to give States money to put criminals on the streets—without bail. Like illegal aliens, they have no reason to show up for trials—plus how many crimes will be committed while they are protected by politicians from law enforcement?

“Teaming up with Rand Paul, Harris has offered a new, supposedly bi-partisan plan to fix mass incarceration in this country. The upshot is that she thinks she can eliminate mass incarceration by giving U.S. Attorney General Jeff Sessions \$15 million, which is less than a bloated federal budget rounding error, to dole out on a program for which he has enunciated no support.

Harris, however, missed two critical details. First, the Bureau of Justice Statistics stopped doing the very reports for which she is calling. Contrary to her position on bail reform, the data has already revealed that monetary conditions of bail actually ensure appearance and public safety. Second, the paltry \$10 million she wants to spend over three years on further reforms is already in the federal budget – but multiplied by as much as fifty to 100 times. In sum, this legislation is an insult to everyone who works on bail reform, whether it is those who want to abolish all money bail or people who think the present system works pretty well. “

This is her latest scam to show the Progressives she is as lawless as they are. She is running for President and needs to show her IQ and common sense is the lowest in the Democrat field.



SENATOR HARRIS' FEDERAL BAIL REFORM LEGISLATION IS PROOF THAT WASHINGTON IS TRULY BROKEN

By Jeffrey J. Clayton, Executive Director, American Bail Coalition, 9/11/17

Most Americans would agree that some degree of bail reform is needed in our country. In fact, there are many dialogues currently taking place among policy makers representing all sides of the issue who are keen to make improvements to our current system. Unfortunately, rookie California Senator Kamala Harris has proven that she is now a true Washingtonian – big on grandstanding and short on positive influence by running a bill that would accomplish only a fraction of what is already being done.

Teaming up with Rand Paul, Harris has offered a new, supposedly bi-partisan plan to fix mass incarceration in this country. The upshot is that she thinks she can eliminate mass incarceration by giving U.S. Attorney General Jeff Sessions \$15 million, which is less than a bloated federal budget rounding error, to dole out on a program for which he has enunciated no support.

Harris, however, missed two critical details. First, the Bureau of Justice Statistics stopped doing the very reports for which she is calling. Contrary to her position on bail reform, the data has already revealed that monetary conditions of bail actually ensure appearance and public safety. Second, the paltry \$10 million she wants to spend over three years on further reforms is already in the federal budget – but multiplied by as much as fifty to 100 times. In sum, this legislation is an insult to everyone who works on bail reform, whether it is those who want to abolish all money bail or people who think the present system works pretty well. In reality, the bill is much more about making headlines – and keeping contributor donations flowing – than it is about actually accomplishing anything.

Harris has a history of holding conflicting legal positions on bail. In fact, during her tenure as California Attorney General, Harris did virtually nothing to correct the highest bail schedules in the land or do anything to stop the race to the bottom in the bail market that created the problem in the first place.

Just last year, while serving as the Attorney General for California, she was tasked with addressing the constitutionality of bail in the state. Two nearly identical federal lawsuits were filed, each alleging that its bail system was unconstitutional in that it created “wealth-based detention.” The premise of both cases was that they violated the equal protection and due process clauses of the Fourteenth Amendment to the constitution.

Harris took the side of the state in the case of *Welchen v. Harris*, writing that claims of discrimination on the basis of economic status from either the existing law or bail schedule did not violate the constitution. Yet incredibly, in *Buffin v. San Francisco*, she refused to defend the constitutionality of California law on exactly the same issue.

Closer scrutiny of Harris's home state of California offers a prime example of why her U.S. Senate legislation is mere grandstanding. California Senate Bill 10 is a bail reform bill that would implement the very policies which Harris is calling for nationwide. According to analysts working at the state legislature and the *Los Angeles Times*, it would cost “hundreds of millions of dollars” in several different categories of costs – and that's just in one state! Apparently, Harris believes that teaming up with Rand Paul to give Jeff Sessions \$15 million, will somehow cover these costs, which could easily go into the billions of dollars nationally. It should be pointed out that Representative Ted Lieu (D-Calif) also has a bill on this issue – one that has some actual teeth. In contrast to what Harris has proposed, Lieu's bill deserves legitimate consideration, regardless of whether one supports or opposes his legislation.

Adding insult to injury, Harris flaunts the tragic case of Kalief Browder, who she claims, is the just the type of person her bill would help. Browder could not escape jail due to his inability to post bail and ultimately committed suicide after eventually being released. Although it had been

widely reported that Browder could not come up with the bail money to be freed, the reality was that he was on a non-bailable probation hold for three years as a juvenile due to a previous conviction. It's a manipulation of reality to suggest that his extended family would not have been able to come up with the bail premium of \$300 had he been bailable. Sadly, Harris' legislation would do nothing to fix the actual problem that lead to Browder's unnecessary detention. Yet, she now wishes to use federal dollars to push policies like those in New Jersey that expand preventative detention without bail, which is the very thing that kept Browder in Rikers Island and which eventually lead to his death.

Readers would be wise to consider Kamala Harris' history before regarding her as the leader of national bail reform. If she actually cared about the issue, she would have done something substantive when she actually had the power to effect real change, rather than urging her fellow senators to hand \$15 million to the Trump Administration to create "economic justice."

#

About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

The Miami Herald

Cash bail nearly completely eliminated in New Jersey

By JOSH CORNFIELD
Associated Press
September 17, 2017 11:39 AM

TRENTON, N.J. - New Jersey has changed the way it deals with bail this year, leading to a huge decrease in the number of criminal defendants in jail awaiting trial, while angering a decimated bail bond industry.

The reforms went into effect in January, and fewer than 30 people facing criminal charges in state court have been given cash bail through August. That compares to hundreds of thousands who received bail last year, according to state court spokesman Peter McAleer.

The new practice is being celebrated by reform advocates who say cash bail unfairly keeps poor defendants in jail, but it has led to lawsuits from the bail bond companies that say it is killing their business.

Some lawmakers and law enforcement officials also say the change has led to instances in which people are quickly released because they aren't deemed a threat then later re-arrested on new charges.

At least two lawsuits have been filed seeking to overturn the changes, including one from a group backed by reality TV star Dog the Bounty Hunter.

HOW IT WORKS

A computer algorithm now helps decide whether a criminal suspect is given bail, let out of jail with an ankle monitor or kept in jail until trial.

The algorithm created by the nonprofit Lara and John Arnold Foundation considers nine factors to decide whether a suspect is a risk to reoffend if they are released. The factors include the type of crime, past convictions, age and whether someone has failed to previously appear in court.

"Are you a risk of reoffending if released in the community and are you a risk of not showing up in the court?" Judge Glenn Grant, who runs the state's court system, said of the key decision the algorithm helps to decide, while also cutting down on discriminatory factors that disproportionately affect minorities.

Grant said that the principal objectives of bail reform was to make sure that poorer low-risk offenders aren't held in jail just because they can't afford bail, and also to eliminate the requirement that violent offenders be given cash bail.

"Under both of those measures, I think that the system has worked as expected," he said.

BAIL INDUSTRY FIGHTS BACK

There have already been two lawsuits filed, including one by a Dallas Cowboys fan accused of assault in a bar fight after an argument about the Philadelphia Eagles. The suit, which also

includes the Lexington National Insurance Co. bail bond company, argues it's unfair he was given home detention and required to wear an electronic monitor, rather than straight cash bail.

The suit says that thousands of others are being subjected to "similar life-altering, liberty-restricting conditions without ever receiving the option of bail" and the reform efforts are also harming bail bonds companies.

The other lawsuit was filed by the family of a Millville man who was fatally shot in April while walking on a street in Vineland. The man charged with the shooting had been released from jail a few days earlier.

"Most of bail agents are going to go out of business. It was implemented as a complete elimination of bail," said Jeff Clayton, of the American Bail Coalition, who estimates 6,000 jobs in the industry are at risk in the state. "A lot of them are looking for other jobs, other industries, some of them are considering moves to other states."

Contact Cornfield at <https://www.twitter.com/JoshCornfield>

The Salt Lake Tribune

Lawmaker, bail-bond industry fail to stop changes coming to Utah courts

Opponents of new system warn it will turn jails into revolving doors; supporters say it will base bail on risk rather than ability to pay.



Rep. Paul Ray, of Clearfield, addresses a committee hearing Wednesday, Nov. 19, 2014, at the Utah State Capitol, in Salt Lake City. (AP Photo/Rick Bowmer)



By Jessica Miller • 17 hours ago

A Utah lawmaker tried but failed Wednesday to put the brakes on an expected change in how the state's court system handles bail.

State courts are preparing to implement a new screening process for bail in November — one that will give judges more information about defendants in deciding if they will need to post bail — and how much — to get out of jail.

But Rep. Paul Ray, R-Clearfield, expressed concern about the changes during a Law Enforcement and Criminal Justice Interim Committee hearing, saying the courts should have come to legislators first before considering such a “dramatic policy change.”

Those from the bail-bondsman industry warned that with the new protocol, jails will become revolving doors for criminals. But those in support of bail reform countered, saying the changes will assess actual risk to the public and not just release those who can afford to pay.

Wayne Carlos, with the Utah Association of Professional Bondsmen and Agents, told the legislative committee that people should be wary of trusting those who have already violated the “public’s trust” by committing a crime. He questioned the worth of promises from such people to show up in court without the risk of forfeiting bail.

“If it sounds too good to be true, it probably is,” he said. “What is the real reason the courts are pushing this? Let’s find out before it’s too late.”

But former U.S. Attorney for Utah Brett Tolman, who spoke in favor of the changes, said it's the bail-bond industry that has a "stranglehold" on the courts and stands to benefit the most from leaving the current system in place.

That system, Tolman said, does not assess public risk and instead focuses only on whether a defendant can pay. This means some of the most dangerous criminals — high-level drug dealers and gang members — are almost always let go. Defendants who are minorities and drug users, he said, are often left to languish in jails because they can't afford to get out.

"We should not be basing public safety on one criteria: Do you have cash?" Tolman said. "How have we gotten to this place?"

The Utah Judicial Council approved the new bail process in January, with a start date of Nov. 13. According to court officials, the new program will give judges an automated report on a defendant, which will include his or her background information, failure-to-appear records and history of violent offenses. The judge can then decide a bail amount — or perhaps release a defendant without the requirement of posting bail. Previously, judges have most often relied only on probable cause statements filed by an arresting officer when making decisions on bail amounts.

Jeff Clayton, executive director for the American Bail Coalition, told legislators that the automated reports are almost always too lenient.

"The biggest problem is that it never recommends bail," Clayton said. "It always recommends release."

According to 2013 data gathered by Measures for Justice, 43 percent of Utah's inmates remain in jail with pending cases. In Salt Lake County, 60 percent of inmates in December 2013 — the most recent data available — were being held pretrial.

Ray asked the committee on Wednesday to "strongly recommend to the courts to hold off on any implementation" until state lawmakers can take a look at it. But the reception from fellow legislators was lukewarm. While the motion had enough support from House members, it tied among senators — meaning the motion failed.

Rep. Kelly Miles, R-Ogden, said he had concerns that passing the motion would punish the courts for not involving legislators, which was never required.

"I do agree, you've raised some concerns," he said. "Maybe this isn't the right way, or it can be tweaked. But I think that can be done in other ways without telling [the courts] to stop their process."

Court officials said after the legislative hearing that they still plan to implement the changes.

"The Utah Courts has always been committed to examining pre-trial issues," spokesman Geoff Fattah said in a statement, "and there will be future ongoing discussions after implementation involving stakeholders."



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The Salt Lake Tribune

Vote to halt bail changes in Utah passes after all, but courts plan to move forward

The reform would gauge defendants on risk rather than ability to pay, and not everyone is pleased.



Rep. Paul Ray, of Clearfield, Utah, addresses a committee hearing Wednesday, Nov. 19, 2014, at the Utah State Capitol, in Salt Lake City. Utah lawmakers want to once again allow state executions by firing squad in order to avoid problems with lethal injection drugs. The proposal from Ray would call for a firing squad if the state cannot obtain lethal injection drugs 30 days before a scheduled execution. Ray says he thinks it's the most humane way to kill someone because an inmate dies instantly. (AP Photo/Rick Bowmer)



By Jessica Miller • 33 minutes ago

After some confusion about legislative interim rules, it turns out a Utah lawmaker's motion to encourage the courts to halt bail changes actually passed — but court officials say they're planning to move forward with the new system anyway.

State courts are preparing to implement a new screening process for bail in November that will give judges more information about defendants in deciding if they will need to post bail — and how much — to get out of jail.

But Rep. Paul Ray, R-Clearfield, expressed concern Wednesday during a Law Enforcement and Criminal Justice Interim Committee hearing, saying the courts should have come to legislators first before considering such a “dramatic policy change.”

Ray asked the committee on Wednesday to “strongly recommend to the courts to hold off on any implementation” until state lawmakers can take a look at it. But the reception from fellow legislators was lukewarm. While the motion had enough support from House members, it tied among senators.

After some discussion Wednesday, lawmakers initially determined that the motion failed. But after reviewing interim rules after the meeting, Ray said in an email to The Tribune that the measure actually passed.

“It needed a tie in one body and a majority in the other,” he wrote.

But court officials said Thursday that their plans are unchanged, and they’ll move forward with the changes in November despite the lawmakers’ request.



The Davis County Jail, located in Farmington has plans for expansion due to overcrowding. Photos are from a media tour of the jail. Of the 434 inmates at the jail, 93 are women. Above, Deputy Joey Clark exits Pod H, one of two pods for women that is filled to capacity. Photo by Leah Hogsten 12/18/2002 Farmington

“The Utah Courts has always been committed to examining pre-trial issues,” spokesman Geoff Fattah said in a statement, “and there will be future ongoing discussions after implementation involving stakeholders.”

Fattah noted that the courts have been getting mixed signals from the legislature: A January 2017 legislative audit strongly encouraged these changes, and now lawmakers are asking for the opposite. He said the tool will be studied in Davis, Beaver and Utah counties after it’s implemented to test its effectiveness.

During Wednesday’s hearing, several from the bail-bondsman industry warned lawmakers that with the new protocol, jails will become revolving doors for criminals. But those in support of bail reform countered, saying the changes will assess actual risk to the public and not just release those who can afford to pay.

Wayne Carlos, with the Utah Association of Professional Bondsmen and Agents, told the legislative committee that people should be wary of trusting those who have already violated the “public’s trust” by committing a crime. He questioned the worth of promises from such people to show up in court without the risk of forfeiting bail.

Former U.S. Attorney for Utah Brett Tolman spoke in favor the changes Wednesday, saying public safety should not be based solely on the whether someone has the money to get out of jail. On Thursday, Tolman said in a statement to The Tribune that the new system has overwhelming support from Utah judges — and noted the lawmakers’ efforts have no binding impact on the courts.

“The bail bondsmen may have money and political influence,” he said, “but the facts support implementing a system where individuals accused of violent crimes cannot just purchase their freedom. ... I expect implementation will move forward as planned.”



(Chris Detrick | Tribune file photo) Attorney Brett Tolman speaks during a press conference at the Utah Pride Center Wednesday June 26, 2013. In historic decisions, the Supreme Court handed gay-rights supporters major victories Wednesday, extending federal rights to same-sex couples and reversing a ban on gay marriage in the nation's largest state.

The Utah Judicial Council approved the new bail process in January, with a start date of Nov. 13. According to court officials, the new program will give judges an automated report on a defendant, which will include his or her background information, failure-to-appear records and history of violent offenses. The judge can then decide a bail amount — or perhaps release a defendant without the requirement of posting bail. Previously, judges have most often relied only on probable cause statements filed by an arresting officer when making decisions on bail amounts.

Jeff Clayton, executive director for the American Bail Coalition, told legislators that the automated reports are almost always too lenient.

“The biggest problem is that it never recommends bail,” Clayton said. “It always recommends release.”

According to 2013 data gathered by Measures for Justice, 43 percent of Utah's inmates remain in jail with pending cases. In Salt Lake County, 60 percent of inmates in December 2013 — the most recent data available — were being held pretrial.



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Utah Bail-Reform Move Going Ahead Despite Lawmaker Concerns

Sept. 21, 2017, at 3:21 p.m.



SALT LAKE CITY (AP) — [Utah](#) courts are planning a new program that could let more suspects deemed low risk out of jail without having to pay bail, but lawmakers are raising concerns about dangerous people back on the streets.

Supporters say it's a shift toward a fairer system that will be safer because risky suspects won't be able to buy their way out of jail.

Some lawmakers like Republican Rep. Paul Ray aren't convinced.

He wants to delay the rollout until the Legislature has a chance to debate the issue next year, and after a close vote lawmakers decided to formally ask the courts to wait.

Utah Courts spokesman Geoff Fattah said Thursday the plan has already undergone careful study. They're still planning to start the program in November and study how it works out.

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Utah bail-reform move going ahead despite lawmaker concerns

By LINDSAY WHITEHURST
Associated Press
September 21, 2017 5:22 PM

SALT LAKE CITY - A new plan that would address concerns about people being held in jail because they can't afford bail is moving ahead in Utah despite some lawmakers' concerns that it could let dangerous people back on the streets, state courts officials said Thursday.

Supporters argue the automated program giving judges information about suspects' risk history is a step toward a fairer system that will be safer because risky suspects won't be able to buy their way out of jail without abolishing cash bail.

But lawmakers like Republican Rep. Paul Ray of Clearfield aren't convinced.

He wants to delay the rollout until the Legislature has a chance to debate the issue next year. After a close vote on Wednesday, lawmakers decided to formally ask the courts to wait.

Court officials, though, say the program has already undergone careful scrutiny, including a legislative audit that pointed the courts in that direction. It's still on track for a November rollout with a Harvard study planned on how it's working, said court spokesman Geoff Fattah.

Bail-bondsmen are among those arguing against the change they say could devastate their industry.

"This tool is a side way to implement the no-money bail movement," said Jeff Clayton with the American Bail Coalition. He says people who put up money to get out of jail show they have ties to the community because family and friends are usually involved. Having cash at stake ensures people come back to court, and if they fail to show up a bail bondsman can track them down rather than police, he said.

But concerns have grown around the country about people kept in jail because they can't pay, and it's been the subject of legal challenges in at least 10 states like Texas and Georgia. Several states have made changes taking into account factors like whether a suspect has a history of violent crime or ditching court appearances.

Among those speaking for the change in Utah was former U.S. Attorney Brett Tolman.

"The current money bail system isn't working," he said in a statement. "I'm hopeful that Utah will continue to move forward."

Deseret News

Bail risk assessments raise concerns among lawmakers, bondsmen

By [Ryan Morgan](#)
[@RyanMor53791934](#)

Published: Sept. 21, 2017 5:30 p.m. Updated: 16 hours ago



Stock image

Recent challenges to New Jersey's bail bonds laws have been a key issue for Utah lawmakers as they consider bail reforms to the state court system.

SALT LAKE CITY — Recent challenges to New Jersey's bail bonds laws have been a key issue for Utah lawmakers as they consider bail reforms to the state court system.

State legislators this week considered delaying the adoption of a computer algorithm designed to help judges determine a suspect's flight risk. Judges would use the algorithm — and their own judgement — to decide to what degree a defendant can be trusted outside of jail while awaiting trial, or whether that person should remain in custody.

The algorithm considers factors such as the crime allegedly committed and its severity, a person's criminal history and whether they've previously failed to appear in court. Utah State Courts plans to implement the algorithm in November.

"For lack of a better term, it's like a FICO score for criminals," Rep. Paul Ray, R-Clearfield, said Wednesday during a meeting of the Legislature's Law Enforcement and Criminal Justice Interim Committee. "Then it tells the judge basically whether or not they can be released on their own recognizance."

Since changes to New Jersey's bail program took effect in January, several lawsuits have been filed against the state, including a federal suit from a grieving mother who says the state's bail reform law freed the man who ended up shooting and killing her 26-year-old son.

Ray recommended delaying the algorithm's implementation, saying it needs further consideration by the Legislature.

"I have a lot of concerns about what's happening under the radar that we have not been told about," he said of the proposed bail reforms. "I'm not saying it's a bad system. I'm just saying it's a huge policy shift, and I think it needs to have legislative approval to move forward to do this."

The committee ultimately voted against Ray's request to delay the algorithm's implementation.

Utah State Courts general counsel Brent Johnson said the reforms will give judges "more information on whether someone is a particular risk."

"It is just a piece of information," he said. "It does not mandate a particular result."

Johnson acknowledged that more people would be released on their own recognizance under the reforms, but he said others would still have the option to purchase a bail bond.

Many people who are neither a flight risk nor a danger to the community end up in custody, he said, and without the information provided by the pretrial assessment, all offenders are essentially treated the same based on the type of crime allegedly committed.

Utah State Courts officials say the program has already undergone careful scrutiny, including a legislative audit that pointed the courts in that direction. It's still on track for a Nov. 13 rollout with a Harvard study planned on how it's working, said courts spokesman Geoff Fattah.

"We feel that this has been carefully studied, carefully analyzed, and in addition to that, there was a legislative audit that was released in January that strongly encouraged us to implement this tool," Fattah said.

Jeff Clayton, executive director of the American Bail Coalition, spoke against the proposed bail changes, citing the New Jersey shooting as well as an incident in Albuquerque where three men released on their own recognizance went on to rape a 12-year-old girl.

Clayton said despite claims the new algorithm would not do away with the existing bail system, bail licenses have been turned in by several companies in states where similar reforms have been implemented.

According to Ray, enacting such a change in Utah would "basically do away with the bail bond industry."

Former U.S. Attorney for Utah Brett Tolman said the bail bond industry benefits those with the money to purchase their way out of jail, adding that the industry has a "complete conflict of interest" in opposing the algorithm.

Tolman touted New Jersey's bail reforms, saying total crime has dropped more than 6 percent and violent crime is down by more than 12 percent since the changes took effect.

"We can point to tragic stories where policies fail us," he said, "but for every story where the bail bondsmen may share about what they perceive to be the failure of risk assessments, I can tell you five stories of catastrophic consequences when we willfully ignore the risk of violent offenders and allow them to just purchase their freedom."

Sen. Daniel Thatcher, R-West Valley City, argued that the algorithm could be a tool to quickly determine whether a suspect could be released.

"You see in the movies how, 'Oh, you've got 24 hours to charge him or release him.' That's not the law in Utah," he said.

For Utah, Thatcher noted, it's 72 "business" hours for a suspect to either be charged or released, and that could further delay an innocent person's release.

"Do they still have a job if they've been in jail for that long? The consequences for being in jail are significant," he said.

Contributing: Associated Press

Judge rejects attempt to halt N.J. bail changes

[Nicholas Pugliese](#), State House Bureau, @nickpugz

Published 8:16 p.m. ET Sept. 21, 2017 | Updated 8:41 a.m. ET Sept. 22, 2017



A federal court judge on Thursday rejected an attempt to halt New Jersey's landmark bail reform law and said that a legal challenge brought by an insurance company that profits from bail bonds has little chance of success.

But a representative of the American Bail Coalition, a national organization of bail underwriters, said an appeal of Thursday's decision is possible and that the industry's fight against New Jersey's reforms will continue.

"While proponents of New Jersey bail reform will trumpet this case as an Iwo Jima of sorts, the truth is this case is far from over," Jeff Clayton, the organization's executive director, said in a statement.

Since the so-called Criminal Justice Reform Act was enacted in New Jersey at the beginning of the year, entities with a stake in America's multibillion-dollar bail bond industry have sought to have it dismantled.

Whereas prior to 2017, courts in New Jersey granted or denied bail based on defendants' ability to pay, judges now conduct individual risk assessments based on

suspects' criminal history and the charges they face before deciding whether to hold or release them, often with monitoring, before trial.

The old system was criticized for being unfair to the poor, who would often languish in county jails because they couldn't post even modest amounts of bails. Now, monetary bail is rare and the bail bond industry has been all but crippled in New Jersey as a result.

In a class-action lawsuit filed in June, attorneys for Britton Holland, a Camden County man charged with second-degree aggravated assault, and Lexington National, a Maryland-based bail insurance company, argued that the new law violated defendants' constitutional rights, including the right to bail.

They sought to have the law halted as the case works its way through the courts.

But U.S. District Court Judge Jerome B. Simandle denied that request in an opinion Thursday and found that "plaintiffs have not made a substantial showing of possibility of success nor of irreparable harm stemming from unconstitutional conduct" under the law.

"Granting the preliminary injunction would pose a high risk of harm to other interested persons," Simandle wrote. "Rolling back the measurable gains brought about under the [Criminal Justice Reform Act] since January 2017 by reinstating the primacy of money bail may also harm the general community by displacing pretrial restrictions meant to protect the community and individual victims and witnesses from risk of harm."

Holland's charges stem from a bar fight over the Philadelphia Eagles. Instead of granting Holland bail and letting him walk free until trial, as would likely have occurred before New Jersey's bail reforms took effect, a judge ordered that Holland wear a GPS-tracking ankle bracelet and agree to home detention as a condition of his release.

Holland's attorneys called his GPS bracelet "a modern-day scarlet letter" that has illegally curtailed his liberty. They argued that bail is guaranteed in the Eighth Amendment of the U.S. Constitution and that Holland and other defendants are entitled to it as an alternative to other court-imposed conditions.

New Jersey Attorney General Christopher S. Porrino, who backed the reforms and is a defendant in the case, hailed Thursday's ruling.

"This is another win for criminal justice reform in New Jersey, which has faced and withstood numerous challenges since becoming effective in January of this year," Porrino said in a statement. "The reforms continue to meet the dual goals of protecting the community by affording judges the discretion to detain without bail the most dangerous defendants, while at the same time minimizing pre-trial incarceration of low-risk, indigent defendants."

Alexander Shalom of the New Jersey chapter of the American Civil Liberties Union, which filed a friend-of-the-court brief in the case along with several other organizations, also applauded the opinion.

“This is a welcomed decision for anyone in our state who values fairness over fortune,” Shalom said in a statement. “No system of pretrial release and detention, including this one, is perfect, but the last thing we need is to heed the bail industry’s desperate call to increase reliance on money bail.”

Clayton of the American Bail Coalition conceded that Thursday’s ruling was “a setback in terms of the plaintiffs’ ability to ultimately succeed on the merits in this case,” but added that “it appears to us that the judge believes a case of this nature could succeed.”

A second lawsuit seeking to derail the bail reform law is also pending in federal court. That case involves June Rodgers, whose son was allegedly murdered in April by a man who was arrested days earlier for unrelated crimes but released under the new law.

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NEW JERSEY POLITICS

Opponents of Christie's bail overhaul lose another round in court

Updated on September 21, 2017 at 8:46 PM, Posted on September 21, 2017 at 6:30 PM

By **S.P. Sullivan**
ssullivan@njadvancemedia.com,
NJ Advance Media for NJ.com

TRENTON -- A federal judge on Thursday declined to put the brakes on New Jersey's sweeping bail system overhaul, ruling it did not serve the public interest to roll back the changes in the midst of a constitutional dispute.

Judge Jerome B. Simandle threw out a request for an injunction from lawyers for the bail bonds industry and [a Camden County man forced to wear an ankle monitor](#) while awaiting trial.

Their motion requested the judge restore cash bail as an option, which would have effectively turned back the clock on the changes to New Jersey's justice system that took effect on Jan. 1.

The overhaul largely replaced cash bail with an arrangement where judges, guided by a risk assessment algorithm, can order defendants locked up or subjected to varying degrees of monitoring based on their risk of flight or danger to the community.

But Paul Clement, a former U.S. solicitor general hired by the bail bonds company Lexington National Insurance Corporation, took up the case of Brittan Holland, a New Jersey man who was charged with second-degree aggravated assault after a bar fight.

Under the new system, Holland was ordered to wear a GPS ankle bracelet and submit to weekly check-ins with court staff as he awaited trial. Clement argued Holland should have also had the option of posting bail with the help of a company like Lexington National, claiming cash bail is a right enshrined in the constitution.

Lawyers for the state Attorney General's Office asked the judge to toss the suit, arguing New Jersey's new system is far fairer now than it used to be because it prevents poor people from being locked up because they can't afford bail while allowing more dangerous defendants to be held or monitored until trial.

The case is being watched across the country as other states debate similar reforms to New Jersey's, which is among the most ambitious criminal justice overhauls in the United States.

The new system was supported by Gov. Chris Christie as well as members of the state Legislature, the New Jersey Supreme Court and civil liberties groups.

It has faced criticism in its first year by local police departments as well as some police unions and county prosecutors who have objected to cases involving defendants who were arrested and released after risk assessments, only to be arrested again for similar crimes.

Earlier this month, [police in Newark sharply criticized](#) the system after a man released into pretrial monitoring was accused of killing two people.

Supporters of the system say such cases were also common under the old system, where defendants who posted bail were rearrested for new crimes.

The bail bonds industry, which has seen its business threatened by similar changes around the country, has financed a number of lawsuits challenging the new system in court.

In July, Duane Chapman -- better known as reality television star "Dog the Bounty Hunter" -- [threw his support behind a wrongful death lawsuit](#) against the Christie administration filed by the family of a New Jersey man who was allegedly shot to death by a suspect ordered released under the new system.

That case is still pending, and the judge's ruling in the Holland case is just one step in what could be a lengthy legal challenge. In a statement following the decision, Clement said the fight was "far from over."

Clement said he would discuss with his clients whether to file an appeal.

Simandle's [94-page decision](#) denied the bail reform opponents' request for an injunction, which could have restored cash bail as an option while the suit moved forward.

The judge ruled that "the public interest in the success of the risk-based release system exceeds the private interests of Holland and Lexington National if the present situation continues as the litigation unfolds."

The decision, the judge noted, was not "a close call."

State Attorney General Christopher Porrino said Thursday the ruling was "another win for criminal justice reform in New Jersey, which has faced and withstood numerous challenges since becoming effective in January of this year."

S.P. Sullivan may be reached at ssullivan@njadvancemedia.com. Follow him on [Twitter](#). Find NJ.com on [Facebook](#).

COURIER-POST

South Jersey's Newspaper | courierpostonline.com

Cowboys fan accused in SJ bar fight loses bail-reform challenge

Jim Walsh, @jimwalsh_cp Published 8:21 p.m. ET Sept. 21, 2017 | Updated 12:00 p.m. ET Sept. 22, 2017



CAMDEN - A federal judge declined to issue an injunction against the state's bail-reform system Thursday, saying prospects were poor for a court challenge brought by a Sicklerville man and a bail-bond firm.

"Neither plaintiff has made a showing of a reasonable probability of eventual success on any claim," U.S. District Judge Jerome Simandle said in a 94-page ruling.

He found "scant likelihood" that plaintiffs Brittan Holland and Lexington National Insurance Co. of Maryland would suffer irreparable harm if reforms remained in place while their proposed class-action suit is pending.

Simandle also expressed "serious doubts" that Holland, a Dallas Cowboys fan accused of assaulting two men at a Winslow bar during an argument over football in April, was an "appropriate plaintiff" for the case.

He noted Holland had voluntarily agreed to terms of his pretrial release, which include home detention and electronic monitoring through a GPS ankle bracelet.

"One who waives the judicial process may not claim due process is denied," Simandle said.

The judge also said a preliminary injunction would pose an unacceptable risk to others.

"This reform has shown great success," Simandle said of the state's move away from a monetary-based bail system that often kept low-income inmates behind bars.

The new system, which began in January, "scores" defendants based on factors that include criminal records, risk of flight and the likelihood of future violent crimes.

Simandle noted the state had 5,717 inmates on June 30, down by 35.4 percent from 8,845 inmates one year earlier.

An attorney for Holland and Lexington could not be reached for comment.

But a representative for an industry group, the American Bail Association, said the case is "far from over."

Jeff Clayton, the group's executive director, said he believes the plaintiffs are evaluating whether to file an immediate appeal "or whether to proceed forward on the merits."

The ACLU-NJ, which argued in favor of the reforms, called the ruling "a welcome decision for anyone in our state who values fairness over fortune."

"No system of pretrial release and detention, including this one, is perfect, but the last thing we need is to heed the bail industry's desperate call to increase reliance on money bail," said Alexander Shalom, a senior staff attorney at the civil liberties organization.

Simandle said he was not persuaded by the plaintiffs' arguments that reforms in place since January deny people the "fundamental right" to monetary bail.

Simandle also rejected the plaintiffs' view that electronic monitoring is a "severe" intrusion on privacy and home detention represents an "unreasonable seizure."

He said expectations of privacy are reduced for people charged with a dangerous offense "that may require detention before trial."

Simandle noted Holland may have received "less stringent" conditions than those he agreed to if the aggravated-assault suspect had risked a pretrial detention hearing.

"It appears he waived it because he faced the very real possibility of going to jail as a pretrial detainee otherwise, given the state's allegations of dangerousness," the judge continued.

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The Salt Lake Tribune

Tribune Editorial: Trust the courts, not the lobbyists.



Al Hartmann | The Salt Lake Tribune Utah Chief Justice Matthew Durrant gives the State of the Judiciary to members of the Utah House of Representatives Monday Jan. 23, the first day of the 2017 session.

September 21, 2017

Some Utah lawmakers voted Wednesday to encourage Utah courts to stop a new screening process meant to identify a defendant's "background information, failure-to-appear records and history of violent offenses."

When prosecutors charge a person with a crime, the judge can order pretrial release, bail or pretrial detention. Judges use bail and pretrial detention to protect public safety and ensure that defendants appear for court proceedings.

The judiciary's plan is to give judges more background information on each defendant in a criminal case, not just the new charges filed against them, so the court will have a better grasp of who needs to be held and who poses little enough threat to the community that they can be released pending trial.

In a legislative committee hearing on Wednesday, Rep. Paul Ray told the committee that the court should have come to the Legislature before considering such a "dramatic policy change."

In case Ray needs a reminder, Utah's Constitution entrusts the court with its own administration. "The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state."

Besides that fact, the court's reforms are no surprise. It is disingenuous for Rep. Ray to suggest the Legislature did not know the court was planning these reforms.

In his report to the Utah Legislature in January, Utah Chief Justice Matthew Durrant told the Legislature he was concerned about Utah's current bail system, especially regarding defendants who could not pay bail. He noted that pretrial detention "means separation from their family and often a loss of their employment, with the accompanying loss of income."

The Legislature's own auditor general, noting that the "pretrial landscape is changing," released a report in January that concluded that "pretrial release decisions are made without adequate information." The auditor reported that judges "lack basic information when making pretrial release decisions" and that lack of information "negatively impacts public safety, taxpayer resources, and defendant outcomes."

In addition, the court published a report in November 2015 after extensively reviewing pretrial release practices. In its report, a court committee found, "Utah's laws discourage judges from exercising discretion to make individualized decisions regarding pretrial release." "Judges are not given the information they need when making a pretrial release or monetary bail decision."

The court's report concluded, "There should be a presumption in favor of pretrial release, free from financial conditions."

In other words, the court signaled in 2015 that it would be moving toward a system that preferred pretrial release over money bail requirements based on the level of offense. Such system will be a fairer way to treat individuals while calculating actual risk.

The Legislature has made great strides in showing its willingness to reform the criminal justice system. The Legislature should continue these efforts, even in the face of alarm from lobbyists with clients worried about losing money.

The executive director for the American Bail Coalition warned legislators about a more-detailed charging report, saying, "The biggest problem is that it never recommends bail. It always recommends release."

Exactly.



New Jersey Bail-Reform Law Ducks Challenge

NICK RUMMELL
September 25, 2017

TRENTON, N.J. (CN) – Unhappy with New Jersey’s bail-reform scheme for different reasons, a bail-bond business and accused barroom brawler under house arrest failed to demonstrate that they are likely to prevail on their constitutional challenge.

Lexington National Insurance Corp. brought the lawsuit in question earlier this year alongside Brittan Holland, a criminal defendant who might have been a prospective client of Lexington’s but for New Jersey’s recently enacted Criminal Justice Reform Act.

Moving from a resource-based system of pretrial release to one based on risk, the CJRA has been lauded since taking effect this past January as leveling the playing field for poor defendants.

Defendants are still subject to monetary bail under the new system, but it is a largely a last resort and to reasonably assure they appear in court.

In Holland’s underlying assault case, Camden County prosecutors opted to impose house arrest instead of bail or pretrial detention to ensure that he appear in court.

Holland was arrested this past April on charges that he became unruly while watching an Eagles-Cowboys game from Joe’s Tavern in Sicklerville, leaving a fellow football with multiple facial fractures.

While the bail-bond business claims that New Jersey’s reform law has cost it customers,

Holland claims that home confinement while he awaits trial is unfairly restrictive.

The terms of Holland’s release allow him to leave the house for work but not to take his son to baseball practices or carry out other responsibilities such as food shopping.

Refusing to enjoin the law Thursday, however, U.S. District Judge Jerome Simandle found neither party showed a likelihood of success on the merits.

In Holland’s case, the court noted, he voluntarily agreed to the pretrial release terms.

“One who waives the judicial process may not claim due process is denied,” the 94-page opinion states.

Simandle also called Holland “a far cry from the hypothetical non-violent defendant” who would have been the ideal candidate for less restrictive pretrial-release conditions. Furthermore Holland should have challenged the terms of his release in the New Jersey Appellate Division before bringing a lawsuit, Simandle found.

“A federal court injunction is not a necessary remedy where the prospect of a state remedy is available,” the opinion states.

Simandle found as well that the “strength of the public interest” in the new bail system outweighs the need for injunctive relief, noting that New Jersey’s pretrial jail population is 35.4 percent smaller on June 30, 2017, than the previous year.

New Jersey’s new bail system was passed after voters in 2014 voted for a referendum that called for reforms. Gov. Chris Christie had long pushed for the reforms, arguing that under the old system any defendant could be granted monetary bail, even violent offenders.

The New Jersey chapter of the American Civil Liberties Union, which filed an amicus brief in support of the law, hailed Simandle’s ruling. “No system of pretrial release and detention, including this one, is perfect, but the last thing we need is to heed the bail industry’s desperate call to increase reliance on money bail,” ACLU-NJ attorney Alexander Shalom said in a statement.

The American Bail Coalition released a statement as well, noting that Holland had agreed to the pretrial conditions “with a gun of sort to his head” as he faced detention for the entire case if he did not agree to the conditions.

“While we think the analysis on the Eighth Amendment was erroneous vis-a-vis the individual’s right to bail under the Eighth Amendment, we think the debate over the meaning of the Eighth Amendment is far from settled,” coalition executive director Jeff Clayton said.

“While proponents of New Jersey bail reform will trumpet this case as an Iwo Jima of sorts, the truth is this case is far from over,” Clayton added.

Holland’s attorneys are considering an appeal.

He and Lexington were represented in the challenge before Simandle by Justin Taylor Quinn with Robinson Miller in Newark, and by Paul Clement of the Washington, D.C., firm Kirkland & Ellis.

“So we’re essentially paying \$100 a day to keep folks who aren’t a risk to the public in jail,” he said.

The Senate Public Safety Committee sent the bill to the Appropriations Committee, the next step on the way to the full Senate.

Sen. Jeff Stone, R-Riverside, who sits on the Public Safety Committee, voted against it, saying he the bill will have the opposite of its intended effect.

“Superior Court judges are elected officials, and if I’m giving them the discretion to release someone on their own recognizance knowing that they have a high propensity to re-offend, I’m going to err on the side of keeping those people in jail,” Stone said. “So while I’ve heard arguments that we’re going to be emptying our jails out and creating capacity, I’m concerned that we’re actually going to be keeping more people in jail.”

Testifying against the bill, Jeff Clayton with the American Bail Coalition said: “I’ve heard that concern, that the risk assessments are conservative and can paint people as riskier than perhaps a judge might think, and so it can backfire. We have to trust judges to try to get it right.”

Judges already have the discretion to release pretrial detainees if they think do not pose a risk of flight or public safety.

Clayton said the real problem is that the bail schedules, which are set by individual counties, are just too high.

Sen. Steven Bradford, D-Los Angeles, asked Bonta whether he had looked at a single uniform bail schedule that might be more equitable.

“We’re moving sort of beyond that. We’re not going to be having bail schedules. We’re moving in a place where the bail schedules will not be a problem because we won’t be using them at all,” Bonta said.

Sen. Nancy Skinner D-Alameda, said she supported the bill because of people like Henderson who are not indigent, but were financially ruined by bail payments.

“It was not a situation where she or her family were completely without resources, but rather the bail circumstance then compromised them for over 10 years,” Skinner said. “Poverty doesn’t necessarily mean indigent. We don’t need to add to people’s poverty in our pursuit of justice.”

Henderson eventually signed a plea agreement. She was convicted of a felony and sentenced to community service. She finished her hours after 10 months, heavily in debt.

“My grandparents ended up having to make most of these payments for me, which was really hard for me,” she said. “The burden I placed on them was heartbreaking. I heard them having conversations about grocery shopping, and how much money they could afford for that.”

She made the last payment on her own and is now a small business owner, but still has blemishes on her credit.

“I ended up throwing 10 years of my life away,” Henderson said. “The hardship that bail debt caused me and my family ended up being the harshest punishment of all.”

Lawsuits have been filed in numerous cities, counties and states, particularly across the Midwest and South, challenging cash bail systems as unconstitutional discrimination against the poor, often with racial implications.

October 2, 2017

5th Circuit court will weigh Harris County's cash-bail system

By Gabrielle Banks

Harris County's controversial cash bail system will face new scrutiny Tuesday before a federal appeals court as judges consider whether it violates the constitutional rights of defendants who can't afford to get out of jail.

County attorneys - who have argued that foregoing cash bail puts the public at risk - will ask the 5th U.S. Circuit Court of Appeals to overturn a lower court order that requires indigent misdemeanor defendants be released on personal bonds within 24 hours of their arrest if they don't have holds or detainers.

Attorneys for the inmates will argue that Chief U.S. District Judge Lee H. Rosenthal's order righted the scales of justice by forcing the county to give low-income defendants the same chance to get out of jail as those with money to post bond.

The class-action lawsuit, filed on behalf of a single mother who couldn't afford to post \$2,500 bail for a drivers license infraction, has divided county officials and cost millions of dollars in legal fees.

Rosenthal ruled earlier this year that the county's bond policies kept thousands of people arrested for low-level crimes in jail for months awaiting trial because they did not have the money to pay bail or given a low-cost personal bond. Many ended up pleading guilty so they could return to their lives.

County officials are nearly unanimous in their contention that Rosenthal's order on April 28 compromises public safety by releasing criminal suspects too quickly and without judicial discretion. They say the county's bail practices, which are in the process of being revised, do not violate the law.

Rosenthal, however, found that despite meaningful efforts at reform, the county was still violating the rights of poor people with its bail practices.

Harris County Attorney Vince Ryan, overseeing a defense that has cost \$4.2 million so far, argues that Rosenthal's order undermines local judges' discretion because the sheriff must accept people at their word that they can't pay bail and release them. That's the case even if a suspect is accused of domestic violence or drunk driving, and regardless of how many times they've been arrested or failed to make court appearances.

"The judge's order shifts judicial functions - the setting of reasonable bail and conditions of release for misdemeanors - to an affidavit by the defendant which must be accepted by the sheriff," said Ryan. "A system that promotes speedy release without real accountability over public safety is not a system that Harris County can embrace."

Elizabeth Rossi, an attorney with Civil Rights Corps in Washington, D.C., which represents the indigent defendants jailed in Harris County, said the ruling should be upheld to prevent 20,000 constitutional violations each year. The group has filed suit in about 20 jurisdictions nationwide over bail practices.

"Rosenthal's analysis reflected the fundamental principle in American law that a person should not be kept in a cage just because they can't afford to make a monetary payment," Rossi said. "The county and the judges are asking they be permitted to perpetuate a discriminatory system of wealth-based detention, but their position has no basis in fact or law, as Rosenthal found in her thorough ruling."

'Equal is sometimes hard to establish'



Photo: Michael Ciglo, Houston Chronicle



IMAGE 1 OF 22

Judge Darrell Jordan, left, testifies about his concerns with the current bail system in the county at Harris County Commissioners Court before the court voted 4-1 to appeal a federal civil rights lawsuit ... [more](#)

Two civil rights groups - the Texas Fair Defense Project and Civil Rights Corp - joined with Susman Godfrey law firm to sue Harris County last year on behalf of Maranda ODonnell, a single mother who was held for two days on a charge of driving without a license because she couldn't afford bail. Two similar lawsuits were merged into the case.

In her April ruling, Rosenthal issued a temporary injunction, concluding the bail system violated the U.S. Constitution's due process and equal protection clauses by discriminating against poor misdemeanor defendants. She ordered the county to begin releasing indigent misdemeanor suspects on personal bonds without posting cash bail if they did not have other charges or warrants.

In the ruling, Rosenthal found that 40 percent of misdemeanor arrestees were being jailed until their case was disposed of by a judge. When they did appear before a judicial officer, the hearing was usually two minutes long and they had minimal opportunity to speak.

Critics worry the opinion is allowing criminals to easily game the system.

City Council member Michael Kubosh, a bail bondsman, said the consequences of letting people out before they see a judge can be quick and irrevocable. He said a man released during Hurricane Harvey was arrested and released three times for looting.

"Where there's no responsibility, there's no accountability," Kubosh said. "It's just making a mockery out of our justice system. Judge Rosenthal has given judicial powers to our jailers to let people out and it just doesn't make any sense."

Commissioner Steve Radack, a former law enforcement officer, said Rosenthal's order didn't leave enough room for judges to properly weigh the consequences of letting people out of jail without bail.

"There's no perfect system," he said, "But equal is sometimes hard to establish."

Jeff Clayton, executive director of the American Bail Coalition, an industry group, said Rosenthal erred.

"She took her eye off the ball and got into what legislators and policymakers should do rather than just applying the law," he said.

Sheriff Ed Gonzalez and County Court-at-Law Judge Darrell Jordan are not appealing the ruling. They both testified the county's bail practices unfairly detain poor defendants and frequently compel them to take guilty pleas. Gonzalez filed a sworn statement saying the county consistently detained people on misdemeanors who would otherwise be released if they could afford bail.

District Attorney Kim Ogg, Public Defender Alex Bunin and County Commissioner Rodney Ellis, also submitted sworn statements supporting the arguments of the indigent defendants.

Ellis said Rosenthal was right on the mark and the county should back out of the suit.

"Undisputed evidence presented in this lawsuit shows people accused of low-level, nonviolent misdemeanors are routinely denied constitutional

protections simply because they are too poor to post bail," Ellis said. "Sadly, the county is pursuing a costly defense of its indefensible, two-tiered bail system instead of investing in reforms that treat all people fairly and make our community safer."

And while the bail industry backs Harris County, more than a dozen non-parties have weighed in with friend-of-the-court briefs, with most supporting the argument that cash bail should not be used to detain poor people while letting people with money await trial in the free world.

National demand for change

The one-hour hearing Tuesday will allow the 5th Circuit justices to consider arguments in the case and question lawyers.

The lawyers on both sides may dispute facts and figures since Rosenthal's order went into effect in June, including the circumstances of the 1,000-plus people released and the rate at which they are failing to appear in court. But the facts before the appeals court are those presented last spring, before Rosenthal's order.

Rosenthal examined the evidence and found the county illegally used bail to detain poor misdemeanor defendants in violation of their rights to due process and equal protection. Being detained under these circumstances exacerbated and perpetuated poverty, making them likelier to lose jobs, sever family ties and re-offend.

The appeals court judges will apply a very narrow set of questions to the facts Rosenthal considered, and decide anew whether Harris County's bail practices violate the due process and equal protection clauses of the constitution. If Harris County violated the constitution, the appeals court will determine whether the remedy Rosenthal ordered was proper given the facts of the case.

Rosenthal's opinion makes note of a sea change underway nationally, as cities and counties begin to examine whether their bail systems function in a way that fairly weighs defendants' rights, the risk they pose to themselves and others and the crimes they're accused of.

"Whether by legislative enactment, judicial rulemaking, or court order, there is a clear and growing movement against using secured money bail to achieve a misdemeanor arrestee's continued detention," Rosenthal wrote.

Civil Rights Corps has two cases pending in Alabama and settled three others where the cities or counties involved no longer detain people on money bail. The U.S. Department of Justice weighed in on one of those cases, issuing a

statement that incarceration due to failure to pay is a violation of due process and equal protection.

The Harris County suit, filed in 2016, now extends to all misdemeanor defendants.

FOLLOW A TIMELINE OF OUR COVERAGE:

May 20, 2016: [Harris County's pretrial detention practices challenged as unlawful in federal court](#)

August 28, 2016: [Bail foes say Harris County attorneys misled federal judge in civil rights case](#)

Sept. 17, 2016: [County leaders have paid \\$170,000 in legal fees fighting bail reform](#)

Nov. 29, 2016: [Videotapes reveal flaws in Harris County bail bond hearings](#)

Dec. 1, 2016: [Senator files judicial complaints over county bail system](#)

March 9, 2017: [Harris County appeals judge's ruling in bail lawsuit](#)

March 28, 2017: [Harris County commissioners exchange words over bail bond lawsuit](#)

April 29, 2017: [Federal judge: Harris Co bail system unfair to poor, low-level defendants](#)

May 2, 2017: [Harris County officials weighing options on bail reform court order](#)

May 3, 2017: [Refusing to settle? New offer on the table in costly Harris Co bail lawsuit](#)

June 6, 2017: [Harris County takes bail suit to US Supreme Court](#)

June 28, 2017: [Texas among six states backing Harris County's bail battle at Fifth Circuit](#)



Does Requiring 'Cash Bail' for People Charged with Crimes Punish the Poor?

October 3, 2017



A federal appellate court today will hear arguments in a basic tenet of American jurisprudence: whether the time honored system of requiring a person accused of a crime to post a cash bail to be released from jail pending trial is unfair, because individuals who can't afford bail are held, sometimes for years, without being convicted of any crime, News Radio 1200 WOAI reports.

The case, O'Donnell et al v. Harris County, stems from a case in Houston, where a judge ruled that the bail system is unfair because the poor sit in jail while wealthier people, who are facing the same charges, are held in custody.

The judge in that case pointed out that the Constitution itself says an individual cannot be deprived of liberty without being judged guilty by a jury of his or her peers, and these individuals have not been judged to be guilty of anything. Attorney Jeff Clayton, who heads the American Bail Coalition, will tell the court that this system is unfair, and judges should have the power to adjust the bail bond system when appropriate.

"It's easy on the outside to say 'if they can't afford their bail, they can't afford their bail'," he said. " But what we don't know is..what does their background look like, what does their criminal history look like."

At issue is what is called the 'set bond' structure which is in place in most Texas counties, which requires that a certain bail be set for a certain level of crime.

But Clayton says getting rid of the cash bail system entirely would be irresponsible, and would lead to an increase in crime.

"What we have seen in Harris County that a large number of people who have been released since this ruling have committed additional crime," he said.

Clayton says if judges were empowered to make decision on the advisability of releasing a person on bail, without bail, or with some other surety, like electronic monitoring, it would insure that justice is served, the public is safe, and poor people are not punished simply for being poor.

The whole concept of bail, officials point out, is not to punish a person but to insure that the person appears for trial, and that now can be done by means other than cash bail.

October 3, 2017

Harris County bail case argued before federal appeals court in New Orleans

By [Gabrielle Banks](#)



Photo: Dave Rossman, Freelance



Attendees hold a paper chain symbolizing those arrested and jailed in Harris County on minor offenses at a Rally for Justice held downtown by the Texas Organizing Project, SEIU Texas and ACLU on Saturday, Oct. 22, 2016. (Dave Rossman photo)

NEW ORLEANS -- Amid a stream of pointed questions from the bench, lawyers for Harris County Tuesday asked panel of the 5th U.S. Circuit Court of Appeals to toss a lower court ruling that the county's criminal justice system violated the constitution by holding poor defendants on low level offenses simply because they could not afford bail.

The arguments challenge an April ruling by Chief U.S. District Judge Lee H. Rosenthal in Houston that the county's bail system violated due process and equal protection by discriminating against poor misdemeanor defendants, when people with the money to could await trial at home.

A trio of appellate judges heard 30 minutes of oral arguments from the county, which has spent \$4.2 million combating the lawsuit, and another 30 minutes from lawyers for a group of indigent defendants who languished in jail for days because they couldn't afford to post bail.

Hearing the matter at the stately white courthouse on Lafayette Square were Judge Edith Brown Clement, a New Orleans jurist appointed by President George H.W. Bush, and two Texas judges, Judge Catharina Haynes, of Dallas, a former civil court judge in Dallas, and Judge Edward C. Prado, who worked for both the district attorney and public defender's office in San Antonio, both of whom were tapped for the 5th Circuit by President George W. Bush.

Dubbed "the nation's most divisive, controversial and conservative appeals court" by the American Bar Association, the New Orleans-based 5th Circuit, hears appellate cases from Texas, Louisiana and Mississippi.

The judges appeared to be questioning whether the bail hearings were substantive for defendants, whether the sheriff had the authority to release people on bond and whether 24-hour limit Rosenthal set for holding indigent defendants without holds or detainers was arbitrary.

Of the three, Haynes commanded the questioning throughout the morning, including when Chuck Cooper, a seasoned appellate lawyer who heads the Washington, D.C. law firm Cooper & Kirk, argued for the county that the bail hearings were not perfunctory.

Haynes interrupted Cooper mid-sentence, with a rhetorical question, "Now they know they're under scrutiny so they add an extra sentence to their rubber stamp?"

To Alec Karakatsanis, director of the Civil Rights Corps in D.C, who represents the indigent defendants who sued the county, Haynes repeatedly asked about why the defendants needed to be released from jail by the 24-hour mark.

"I'm asking a very specific question you're not answering," she said. "Where in the U.S. Constitution does it say you're required to release... within 24 hours."

"It doesn't," Karakatsanis said.

Haynes also asked what's the value of the affidavit inmates sign to swear they can't afford bail.

"What if they're lying on this affidavit--I don't know, if they're a millionaire or something?" she queried.

Karakatsanis said they could face further prosecution for contempt if they misrepresented their means.

NEW SCRUTINY: [5th Circuit court will weigh Harris County's cash-bail system](#)

The panel of judges is not expected to rule immediately.

Following an eight-day hearing, Rosenthal ruled on April 28 that the county's bail practices were unconstitutional., and she ordered the county to release indigent inmates arrested on low-level charges within 24 hours if they do not have detainers, holds or competency hearings pending.

Rather than putting cash upfront, these individuals are now permitted to await trial on personal bonds.

The judge found defendants were exposed to rushed hearings and those who tried to speak were commanded not to, shouted down or ignored She said the judges did not do the analysis to conclude that cash bail is better than unsecured bail.

The case was initially brought on behalf of Maranda O'Donnell, a young mother who was held in the Harris County Jail because she could not afford to post \$2,500 bail after being arrested for driving with a suspended license. The class-action suit will affect other inmates in the jail.

Prior to the morning session, Elizabeth Rossi, an attorney with Civil Rights Corps, said she was ready for the appeals.

"We're looking forward to answering the panel's questions and explaining why this is a simple case that upholds fundamental principles of liberty enshrined in the constitution," she said.

County Attorney Vince Ryan said the 24-hour timeline Rosenthal set was problematic.

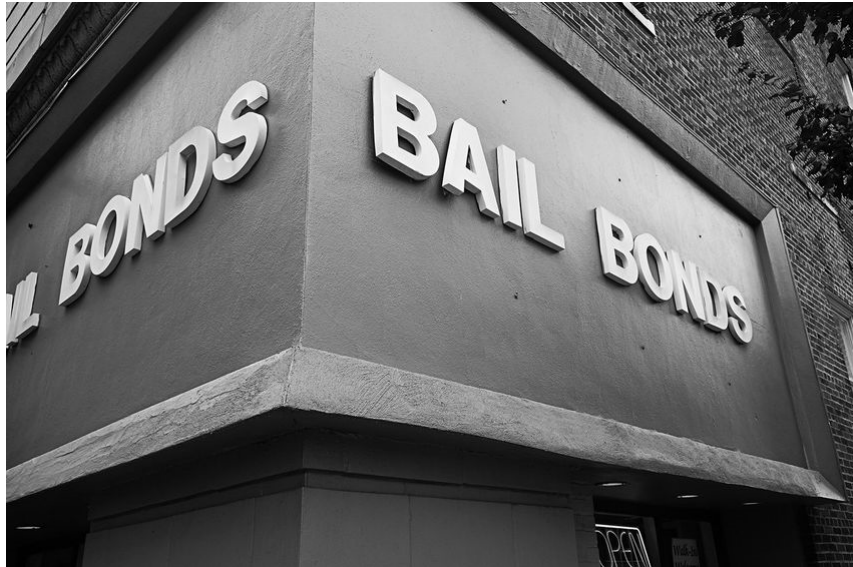
"The judge's order shifts judicial functions—the setting of reasonable bail and conditions of release for misdemeanors—to an affidavit by the defendant which must be accepted by the sheriff," he said. "The order applies regardless of the number of times a person is arrested and fails to appear for court. A system that promotes speedy release without real accountability over public safety is not a system that Harris County can embrace."



Appellate judges show concern over Harris County bail practices, court ruling

Harris County fought for its bail system in front of a panel of three federal appellate judges Tuesday morning. The County is asking the court to overturn a lower judge's ruling that called its pretrial processes unconstitutional.

by [Jolie McCullough](#) Oct. 3, 2017 4 hours ago



Harris County judges and bail bond companies are fighting against court-ordered changes in the county's bail system. iStock/zimmytws

NEW ORLEANS — A panel of three federal appellate judges seemed concerned Tuesday morning with Harris County's bail practices concerning poor misdemeanor defendants, but they also questioned a lower judge's ruling that changed the county's system.

The 5th U.S. Circuit Court of Appeals in New Orleans held an hour-long hearing on [the pretrial system of Texas' most populous county](#), where arrestees who can't afford their bail bonds regularly sit in jail — often until their cases are resolved days or weeks later — while similar defendants who have cash are released. Harris County is fighting an April ruling in which U.S. District Judge Lee Rosenthal called the county's bail practices unconstitutional and ordered the release of almost all misdemeanor defendants from jail within 24 hours of arrest, regardless of their ability to pay their bail amount.

Charles Cooper, the attorney representing Harris County judges, spent most of his time in front of the judges arguing that the federal courts weren't the right arena for the current bail fight. He said inmates requesting release from jail need to go through state courts first. Judges Edward Prado and Catharina Haynes seemed unconvinced of the argument.

“Is your concern that Judge Rosenthal didn't let the state get the first bite of the apple?” Haynes asked. “By the time you got to federal court, your entire sentence as a misdemeanor defendant would be complete, I would guess.”

Most misdemeanor defendants in Harris County who are released from jail before their trial are released on money bail — where a judicial officer sets a cash amount to ensure a defendant

returns for future court hearings. In her ruling, Rosenthal said the county denied poor defendants due process by usually ignoring recommendations to release defendants on personal bonds, where no money is due, even though they couldn't afford money bail.

The judges repeatedly peppered Cooper with questions about the county's probable cause hearings, in which judicial officials called hearing officers hear the charges against a defendant, evaluate reports from pretrial interviews and occasionally alter bail. The plaintiffs have argued that defendants are not allowed to speak at these hearings, which Haynes and Prado jumped on.

"They're called hearing officers. Is there a hearing or do they just look at the form and make a decision?" Prado asked.

When Cooper contended that they did, Haynes cut him off: "But they can't speak. What is a hearing if you're not going to listen?"

Judge Rosenthal's ruling was groundbreaking. In it, she ordered that all misdemeanor defendants who sign an affidavit claiming they can't afford their initially-set bail bond amount must be released on a personal bond. She also said all those indigent defendants must be released within 24 hours of their arrest, regardless of whether they've had their probable cause hearing. If inmates arrived to the Harris County jail from an outlying facility after 24 hours of their arrest and they hadn't had their hearing yet, the sheriff was ordered to release them on a personal bond. Haynes said she was "shocked" by that order.

"It seems chaotic to say a sheriff can ignore a court order," she said.

She also questioned the time frame of 24 hours.

"Why not 48 hours? Or 72, or even 96? Where is the magic of 24 hours other than the Texas law to find probable cause, which you're not challenging?" she asked attorney Alec Karakatsanis of Civil Rights Corps, who was representing the former inmates.

Karakatsanis said the time frame aligned with the state law, and mentioned defendants who lose their job, car and insurance while detained in jail.

Throughout the appellate hearing, judges questioned what was happening in the county since the injunction.

In his argument, Cooper cited multiple county reform efforts that have taken place since the court order took effect in June. In July, the county began using a new risk assessment tool to better recommend to judicial officers setting bail when low-risk offenders should be released on personal bonds. He said, though no data has been recorded in the court, that release on personal bonds has increased.

Haynes questioned whether it was worth sending the case back to the lower court to find new facts since the reforms have taken place. Karakatsanis argued the new facts are unknown, and that there is nothing in the court record to corroborate Cooper's statements.

County Judge Darrell Jordan, the only Harris County judge who rejected money bail for indigent defendants before the ruling, was at the arguments and said afterward that he wished there was an opportunity to talk about the system under the changes. Overall, he said, the process hasn't changed.

"If it is sent back to the lower court, then the numbers will show what is going on," he said. "People are still being placed in jail, and they can't afford to get out."

It is unknown when the judges will make a decision whether to uphold Rosenthal's ruling, overturn it or send it back to the lower court. But after the ruling, Karakatsanis said he was optimistic the court will stand by Rosenthal's injunction.

"The order that they're appealing from is based on very solid evidence, and they're asking for it to be overturned," he said. "You can't just come in front of higher courts and say, 'Well, facts are totally different from what happened...' without any citation."

Harris County officials wouldn't comment on the arguments, but on the courthouse steps, John O'Neill, an appellate attorney for the county, said more defendants skipped court dates after the injunction and before the flooding caused by Hurricane Harvey.

"If this [lawsuit] succeeds, the criminal justice system in every state in the United States will be thrown into chaos," he said. "The order has actually produced far more chaos than the flood has."

THE NEW ORLEANS ADVOCATE

Appeals panel hears challenge to bail bonds; case could reverberate in New Orleans lawsuit

BY MATT SLEDGE | MSLEDGE@THEADVOCATE.COM OCT 3, 2017 - 3:04 PM



Lawyer for the Tangipahoa Parish School Board Mike Johnson, center, leaves the John Minor Wisdom courthouse, home of the 5th Circuit Court of Appeals, after a morning debate along with the ACLU in New Orleans on May 22, 2007. The Tangipahoa Parish School Board and Louisiana chapter of the ACLU have been battling for more than 3 years on the topic of sectarian prayers at the beginning of meetings.



Matt Sledge

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Federal appeals judges heard arguments Wednesday on a lawsuit out of Houston that could dramatically reshape how judges set bonds for defendants accused of minor crimes throughout much of the South.

Civil-rights lawyers told a three-judge panel from the U.S. 5th Circuit Court of Appeals that judges are routinely stripping poor defendants of their right to a fair hearing. Lawyers for Texas judges said the federal courts had no role to intervene in a state matter.

The judges gave no indication as to how they will rule, but their decision could set precedent for a similar federal lawsuit filed in New Orleans in June against Harry Cantrell, a magistrate judge in Criminal District Court. The 5th Circuit has jurisdiction over Texas, Louisiana and Mississippi.

“It depends on what they say, but certainly the same basic legal issues are at the heart of both cases,” said Alec Karakatsanis of the Civil Rights Corps, a nonprofit law firm pursuing the cases in both Houston and New Orleans. “Can they throw people who are presumptively innocent in jail just because they can’t pay?”

The matter at hand before the appeals judges Wednesday was a temporary ruling issued in April by U.S. District Judge Lee Rosenthal of Houston, a George H.W. Bush appointee, who found that county judges there had violated defendants' constitutional rights against "wealth-based discrimination."

Instead of considering whether defendants accused of minor crimes had enough money to make bond, judges stuck to a pre-determined schedule of bond fees, Rosenthal found.

In one case, a 22-year-old single mother arrested for driving with an invalid license was ordered to pay \$2,500 bail without an opportunity to speak to a judge. She spent three days in jail.

"Defendants who try to speak are commanded not to, shouted down, or ignored," Rosenthal said.

The judge said that in response to the constitutional violations, she was ordering Houston officials to release indigent misdemeanor defendants without forcing them to post cash bonds. The ruling does not apply to felony defendants.

As Rosenthal acknowledged in her ruling, the lawsuit against bonds in Harris County is part of a larger movement challenging the bail-bonds industry in the United States. Civil-rights lawyers say poor people are penalized for their poverty, while the bail-bond lobby says its members provide an incentive for defendants to behave on release.

The battle erupted in New Orleans in June with the lawsuit against Cantrell.

Civil Rights Corps and the MacArthur Justice Center in New Orleans allege the judge set a minimum bond for misdemeanor offenses without considering the defendant's ability to pay.

"This court never goes any lower than \$2,500," Cantrell said in one case. "You don't have to ask me for that anymore."

In another case, Cantrell threatened to charge a public defender with contempt when the lawyer asked him to consider a lower bond.

U.S. District Judge Eldon Fallon, a Bill Clinton appointee, has not reached a decision in the New Orleans lawsuit.

Meanwhile, officials in Harris County, which includes Houston, appealed Rosenthal's ruling. On Wednesday, their lawyers argued that the federal judge had overstepped her authority.

Charles Cooper, a lawyer for the local judges in Texas, said the issues raised in the federal lawsuit were better suited for state court. He said once defendants have received a court-appointed lawyer, they can make the case that they are unable to pay a cash bail.

But the federal appeals judges expressed fears that if they don't step in, a barrage of those appeals could overwhelm Texas courts.

"You have hundreds of habeas corpus petitions hitting the county courts ... instead of one class action?" asked Judge Edward Prado, who was appointed by President George W. Bush.

Cooper said he was confident there would be no "clogging" of the courts. He added that it was "simply, clearly erroneous" for the other side to claim that county judges did not consider individual circumstances.

"They do not rubber-stamp," Cooper said. "They consider whether or not an unsecured bond is appropriate in every case."

Meanwhile, Karakatsanis argued that Rosenthal was right to do away with the cash bail system for misdemeanor defendants. The judge found that most defendants had their bail set at a one- to two-minute hearing.

"What Judge Rosenthal found is that they're never even asking the questions about ability to pay," Karakatsanis said. "You have to afford the person an opportunity to be heard."

Prado and the other judges on the panel -- Edith Brown Clement and Catharina Haynes, both also appointed by George W. Bush -- did not tip their hand as to how they might rule or when. But Prado and Haynes did ask whether Rosenthal overextended herself with her sweeping order.

“Part of the complaint was that there’s no discretion ... but now under the injunction it’s that if you don’t have your hearing within 24 hours, you’re released ... have we gone too far to the other side?” Prado said.

Texas' Bail System Goes To Court



The case of ODonnell et al. v. Harris County, Texas et al., is a federal lawsuit which alleges that Texas' bail system is unconstitutional. It concerns three individuals who officials arrested. They claim that authorities unlawfully denied them the right to bail because of their inability to pay the amount indicated by Harris County's set bond schedule.

The case has enormous implications for public safety, not only in Harris County but large parts of Texas, Louisiana, and Mississippi, the jurisdiction of the Fifth Circuit Court of Appeals. Because it is a federal case, the court's ruling may have a ripple effect throughout the entire U.S. The decision may cause the total abolishment of money bail nationwide.

Judge Lee Rosenthal of Houston's U.S. District Court this past April 28 issued a preliminary injunction. It is in support of the plaintiff's contention. Harris County, Texas appealed the case where it will be heard this coming Tuesday by a three-judge panel in the 5th Circuit Federal Appeals Court in New Orleans.



Appeals Court Hears Arguments on Harris County Bail

By iHeartMedia's Nik Rajkovic
October 4, 2017

Oral arguments are heard in a class-action case involving Harris County's bail system.

The case before the **Fifth Circuit Court of Appeals** involves three low-level offenders who claim they were denied the right to bail because they simply could not afford it, so they were stuck behind bars without a hearing.

“What this case is really about is meaningful consideration of somebody's ability to pay and the timing that, and there's some dispute over when that happens,” says Jeff Clayton, executive director of the **American Bail Coalition**.

Clayton questions whether the constitution should require a hearing within 24 hours and if not, is the inmate entitled to an immediate release on bond.

The county contends 24 hours is not enough time to determine pre-trial alternatives.

“Eighty-three percent of these cases are done within 24 hours, so I don't think these judges are going to go for that,” says Clayton. “It's either on and you have to do it, or it's off. Really it's all about consideration, not instantaneous release and there's no consideration.

A ruling is expected in the next 30 to 60 days.



Harris County case could affect Texas' bail system

Posted: Tuesday, October 3, 2017 11:34 pm | Updated: 11:35 pm, Tue Oct 3, 2017.

by DWIGHT BAKER news@baycitytribune.com

A potential landmark court case in the U.S. Court of Appeals for the Fifth Circuit in New Orleans Tuesday, Oct. 3, could impact Texas' bail system.

The case of ODonnell v. Harris County, Texas is a federal lawsuit alleging that Texas' bail system is unconstitutional. Three people who were arrested in Harris County claim they were unlawfully denied bail because of their inability to pay the amount dictated by Harris County's bond schedule.

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Appellate judges show concern over Harris County bail practices, court ruling

Published on Tuesday, 3 October 2017 17:24 - Written by [Jolie McCullough, The Texas Tribune](#)

NEW ORLEANS — A panel of three federal appellate judges seemed concerned Tuesday morning with Harris County's bail practices concerning poor misdemeanor defendants, but they also questioned a lower judge's ruling that changed the county's system.



The 5th U.S. Circuit Court of Appeals in New Orleans held an hour-long hearing on [the pretrial system of Texas' most populous county](#), where arrestees who can't afford their bail bonds regularly sit in jail — often until their cases are resolved days or weeks later — while similar defendants who have cash are released. Harris County is fighting an April ruling in which U.S. District Judge Lee Rosenthal called the county's bail practices unconstitutional and ordered the release of almost all misdemeanor defendants from jail within 24 hours of arrest, regardless of their ability to pay their

bail amount.

Charles Cooper, the attorney representing Harris County judges, spent most of his time in front of the judges arguing that the federal courts weren't the right arena for the current bail fight. He said inmates requesting release from jail need to go through state courts first. Judges Edward Prado and Catharina Haynes seemed unconvinced of the argument.

"Is your concern that Judge Rosenthal didn't let the state get the first bite of the apple?" Haynes asked. "By the time you got to federal court, your entire sentence as a misdemeanor defendant would be complete, I would guess."

Most misdemeanor defendants in Harris County who are released from jail before their trial are released on money bail — where a judicial officer sets a cash amount to ensure a defendant returns for future court hearings. In her ruling, Rosenthal said the county denied poor defendants due process by usually ignoring recommendations to release defendants on personal bonds, where no money is due, even though they couldn't afford money bail.

The judges repeatedly peppered Cooper with questions about the county's probable cause hearings, in which judicial officials called hearing officers hear the charges against a defendant, evaluate reports from pretrial interviews and occasionally alter bail. The plaintiffs have argued that defendants are not allowed to speak at these hearings, which Haynes and Prado jumped on.

"They're called hearing officers. Is there a hearing or do they just look at the form and make a decision?" Prado asked.

When Cooper contended that they did, Haynes cut him off: "But they can't speak. What is a hearing if you're not going to listen?"

Judge Rosenthal's ruling was groundbreaking. In it, she ordered that all misdemeanor defendants who sign an affidavit claiming they can't afford their initially-set bail bond amount must be released on a personal bond. She also said all those indigent defendants must be

released within 24 hours of their arrest, regardless of whether they've had their probable cause hearing. If inmates arrived to the Harris County jail from an outlying facility after 24 hours of their arrest and they hadn't had their hearing yet, the sheriff was ordered to release them on a personal bond. Haynes said she was "shocked" by that order.

"It seems chaotic to say a sheriff can ignore a court order," she said.

She also questioned the time frame of 24 hours.

"Why not 48 hours? Or 72, or even 96? Where is the magic of 24 hours other than the Texas law to find probable cause, which you're not challenging?" she asked attorney Alec Karakatsanis of Civil Rights Corps, who was representing the former inmates.

Karakatsanis said the time frame aligned with the state law, and mentioned defendants who lose their job, car and insurance while detained in jail.

Throughout the appellate hearing, judges questioned what was happening in the county since the injunction.

In his argument, Cooper cited multiple county reform efforts that have taken place since the court order took effect in June. In July, the county began using a new risk assessment tool to better recommend to judicial officers setting bail when low-risk offenders should be released on personal bonds. He said, though no data has been recorded in the court, that release on personal bonds has increased.

Haynes questioned whether it was worth sending the case back to the lower court to find new facts since the reforms have taken place. Karakatsanis argued the new facts are unknown, and that there is nothing in the court record to corroborate Cooper's statements.

County Judge Darrell Jordan, the only Harris County judge who rejected money bail for indigent defendants before the ruling, was at the arguments and said afterward that he wished there was an opportunity to talk about the system under the changes. Overall, he said, the process hasn't changed.

"If it is sent back to the lower court, then the numbers will show what is going on," he said. "People are still being placed in jail, and they can't afford to get out."

It is unknown when the judges will make a decision whether to uphold Rosenthal's ruling, overturn it or send it back to the lower court. But after the ruling, Karakatsanis said he was optimistic the court will stand by Rosenthal's injunction.

"The order that they're appealing from is based on very solid evidence, and they're asking for it to be overturned," he said. "You can't just come in front of higher courts and say, 'Well, facts are totally different from what happened...' without any citation."

Harris County officials wouldn't comment on the arguments, but on the courthouse steps, John O'Neill, an appellate attorney for the county, said more defendants skipped court dates after the injunction and before the flooding caused by Hurricane Harvey.

"If this [lawsuit] succeeds, the criminal justice system in every state in the United States will be thrown into chaos," he said. "The order has actually produced far more chaos than the flood has."

Appeals court judges get tough with both sides in contentious Harris County bail case

By **Gabrielle Banks** Updated 9:35 pm, Tuesday, October 3, 2017



Photo: Michael Ciaglo, Staff

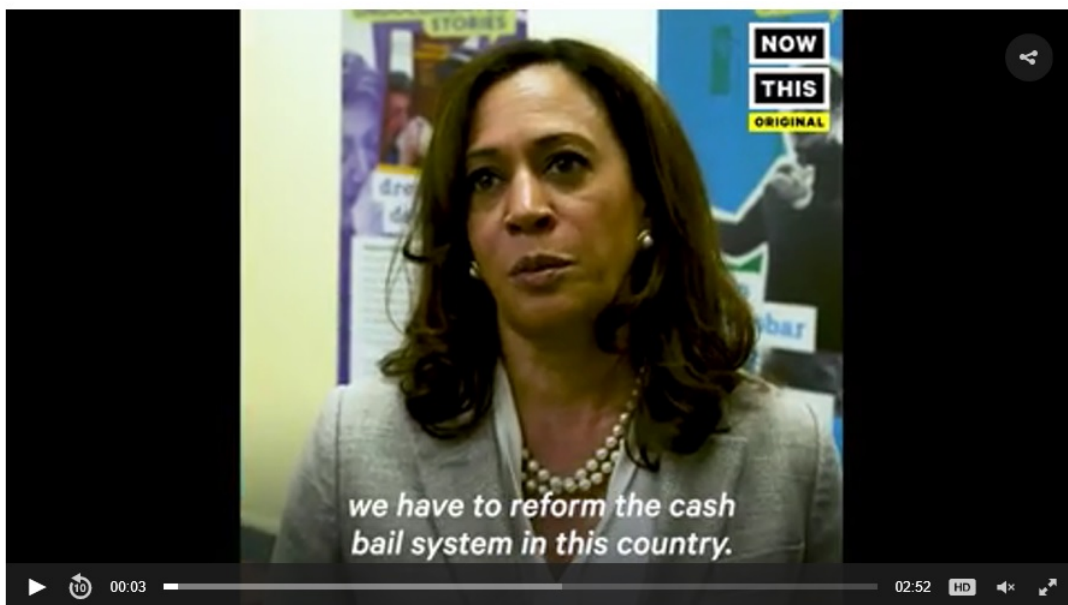


Harris County Commissioner Rodney Ellis, right, has clashed with the other commissioners on the county's bail system. He even has filed court papers against the county in a costly civil rights case against the system.

NEW ORLEANS — A trio of federal appeals court judges grilled attorneys over the inner workings of Harris County's bail system Tuesday, as lawyers for the county attempted to overturn a Houston judge's ruling that it violated the constitution by keeping thousands of poor, low-level offenders in jail simply because they can't afford bail.

The three-judge panel of the 5th U.S. Circuit Court of Appeals interrupted lawyers and fired back questions over the fairness of allowing rapid-fire video bail conferences and the vetting of offenders who can simply claim on a form they're too poor to raise bail.

Rodney Ellis, the only county commissioner to back the lower court's ruling, had a front-row seat for the arguments. Afterward he said the judges had apparent concerns about Harris County's bail system but their questions indicated they also were troubled about whether the injunction halting "wealth-based bail" trampled on local officials' discretion.



"We have to reform the cash bail system in this country."

Media: NowThisPolitics

"I think they're trying to balance the issue of states' rights when, in this instance, I think the state and local government is clearly wrong, that there's something wrong with the system," said Ellis, a former state senator who authored the state's indigent defense law.

The county's arguments challenged an April ruling by Chief U.S. District Judge Lee H. Rosenthal in Houston that the bail system violated the U.S. Constitution's guarantees of due process and equal protection by unfairly warehousing poor misdemeanor defendants when people with money could await trial at home.

She ordered the county to allow misdemeanor inmates to be released on personal bonds within 24 hours of being taken into custody.

The county contends Rosenthal's order endangers public safety by letting people out of jail before judges have a chance to review the circumstances of their release.

With several county criminal judges — all defendants in the case — also watching intently from the gallery, the judges heard 30 minutes of arguments from the county, which has so far spent \$4.2 million combating the lawsuit. That was followed by another 30 minutes of arguments from attorneys for indigent defendants who languished in jail for days because they couldn't afford to post bail.

The key issues before them are whether Rosenthal was correct to find the county's bail system discriminatory and whether her injunction offered a proper remedy to right what was wrong with the county's bail practices.

Attorney John O'Neill, who represents most of the elected county court-at-law judges, said after the hearing that Rosenthal's order has resulted in more defendants failing to show up for their court appearance, which bail is designed to prevent.

"It's a tragedy," he said. "It's chaos."

'Rubber stamp'

The panel seemed to be questioning whether the county's bail hearings were substantive for defendants, whether the sheriff had the authority to release people on bond and whether it was arbitrary for Rosenthal to set a 24-hour limit for releasing qualified indigent defendants from custody.

The judges also appeared to be grappling with whether the federal courts should be in the business of sorting out how counties handle their bail proceedings or whether that should be left to the discretion of county criminal judges who hear misdemeanor cases.

Dubbed the nation's "most divisive, controversial and conservative appeals court" by the American Bar Association, the New Orleans-based 5th Circuit hears cases appealed from federal courts in Texas, Louisiana and Mississippi.

Hearing the arguments Tuesday at the majestic white marble courthouse on Lafayette Square — where many civil rights matters were heard in decades past — were judges Edith Brown Clement, a veteran New Orleans jurist; Catharina Haynes, of Dallas, a former civil court judge; and Edward C. Prado, who previously worked for the district attorney and public defender's offices in San Antonio. All were appointed to the court by Republican presidents.

Haynes dominated the questioning throughout the morning, challenging both sides with her inquiries.

When Chuck Cooper, a seasoned appellate lawyer who heads a Washington, D.C. law firm, argued the county bail hearings were not perfunctory, Haynes interrupted Cooper mid-sentence.

"Now they know they're under scrutiny so they add an extra sentence to their rubber stamp?" she asked.

While bail hearings may be brief, Cooper replied, the judges do give consideration to each defendant based on information gleaned during a pretrial services interview.

Haynes also quizzed Alec Karakatsanis, director of the Civil Rights Corps in Washington, D.C., who represents the indigent defendants who sued the county, asking why defendants needed to be released from jail by the 24-hour mark.

"I'm asking a very specific question you're not answering," she said. "Where in the U.S. Constitution does it say you're required to release... within 24 hours?"

"It doesn't," Karakatsanis replied.

Haynes also wanted to know the value of the affidavit that detainees sign swearing they can't afford bail. "What if they're lying on this affidavit? I don't know, if they're a millionaire or something?" she asked.

Karakatsanis said they could face further prosecution for contempt if they misrepresented their means.

Going too far?

The class-action lawsuit was filed by two civil rights groups — Civil Rights Corps and the Texas Fair Defense Project — and two law firms donating their services on behalf of Maranda O'Donnell, a young mother who was held in the Harris County Jail because she could not afford to post \$2,500 bail after being arrested for driving without a valid license. The suit applies to other inmates at the jail detained on misdemeanors as long as they don't have holds or detainers.

During the hearing Tuesday, Cooper assured the court that the judicial process was working efficiently in Harris County, with defendants having hearings on the next business day after their arrest and the chance to question the terms of their bail.

"I thought they were only given less than a minute to talk and they were told not to talk?" Prado asked.

Cooper clarified defendants have a chance to raise constitutional issues when they're before county law judges. But early in the process some defendants are told not to speak to the judge to avoid self-incrimination, Cooper explained.

Clement then asked Cooper what the logic was behind the hearing if defendants were told not to speak.

Haynes doubled up on the questioning. "What is a hearing if you're not going to listen?" she asked.

Cooper encouraged judges to view all the video hearings in evidence, and not just the ones the inmates' attorneys had "cherry picked" as egregious. They would see some back-and-forth, he said.

Prado pushed another line of inquiry — about whether Rosenthal's order limits judges' abilities to make individual decisions — during arguments from Daniel S. Volchok, from one of two firms helping represent the jail inmates.

"That doesn't give judges any discretion," he said. "Have we now gone too far to the other side? We had a system where everyone gets locked up. Now we have a system where everyone gets released."

Volchok said the sheriff — who releases inmates before the 24-hour deadline — and the county law judges still have discretion to make sure people are lawfully detained when appropriate.

Haynes jumped in again before Volchok finished his sentence.

"I find it very disturbing the sheriff needs to say to the judge, 'I'm not going to follow your order.' That's chaotic," she said, explaining Rosenthal's order forced the sheriff to act so quickly it put him at odds with judicial discretion.

A ruling from the appeals court could take months.

POLITICS 10/03/2017 07:51 pm ET

A Judge Halted This ‘Unconstitutional’ Cash Bail System. The Status Quo Fought Back.

Harris County, Texas, brought on a powerhouse conservative attorney to defend its money-based detention *system before a federal appeals court.*



By [Ryan J. Reilly](#)

NEW ORLEANS — A heavyweight conservative lawyer with ties to the Trump administration squared off with the founder of a small civil rights nonprofit that aims to end “wealth-based pretrial detention” on Tuesday, in a case that could ultimately determine the future of cash bail in the United States.

Three judges from the Fifth Circuit Court of Appeals in New Orleans heard oral arguments in a lawsuit about cash bail policies in Harris County, Texas, which led individuals charged with low-level misdemeanors to spend days and even weeks in jail. The named plaintiff in the case is Maranda O'Donnell, a young mother who in May 2016 was [jailed](#) for several days on \$2,500 bail after being arrested for driving on an invalid license on her way to pick up her daughter. Civil Rights Corps, a nonprofit founded to “challenge mass human caging and to create a legal system that promotes equality and human freedom,” teamed up with the Texas Fair Defense Project and the law firm Susman Godfrey in Houston to challenge bail practices in the third largest jurisdiction in the U.S.

The [money bail system](#) in place across much of the country is in many ways a modern anomaly. Who stays in jail and who gets out before trial is often not determined by public safety considerations or by a person's history and circumstances, but by whether individuals or their family members can come up with a pre-determined amount of money to secure their release. Arrestees who cannot afford their bail end up either paying a private bail bondsman a non-refundable fee to secure their freedom, pleading

guilty just so they can get out of jail, or spending weeks and months behind bars awaiting trial.



BILL OXFORD VIA GETTY IMAGES

Harris County, which serves the Houston region, has one of the largest jails in the country. [HuffPost's jail deaths project](#) found that the understaffed and overcrowded facility [had a higher per capita death rate](#) than most other jails in the country. The Harris County case offered an extensive body of evidence about how a money-based detention system works.

Hearings would typically last a minute or two tops. Judges or the hearing officers running the system would follow a bail schedule to set the bond amount and never inquire about a defendant's ability to pay. And there was video showing how the system worked in practice: One judge [doubled](#) a woman's bail from \$1,000 to \$2,000 because she said "yeah" instead of "yes" when asked to answer a "yes or no" question.

Following several days of hearings earlier this year, Chief U.S. District Judge Lee Rosenthal of the Southern District of Texas issued a preliminary injunction that banned Harris County from holding misdemeanor defendants for more than 24 hours if they said they couldn't afford their bail. In a detailed 192-page [opinion](#), the George H.W. Bush appointee wrote that under federal and state law, "secured money bail may serve to detain indigent misdemeanor arrestees only in the narrowest of cases." She found that the plaintiffs challenging the system were likely to succeed on the merits, and that Harris County's policies and practices violated the equal protection and due process clauses of the U.S. Constitution.

More than 4,000 misdemeanor defendants have been released from Harris County Jail under the terms of the injunction since it went into effect, according to Civil Rights Corps. The organization has been challenging local pretrial detention systems in many parts of the country. Many jurisdictions have chosen to settle and change their practices.

But Harris County is fighting on, having already racked up millions of dollars in legal fees to defend its system.

Challenging the status quo of the bail system will be an uphill battle for civil rights advocates, as money bail has a long history in the U.S. The bail bond industry is fighting to protect its interests, portraying any changes to money-based bail as dangerous to public safety and [hiring](#) Paul Clement, the former solicitor general who defended bans on same-sex marriage before the Supreme Court.

Harris County hired Charles Cooper, a well-known conservative lawyer with ties to the Trump administration, who also unsuccessfully defended a ban on same-sex marriage. And all three judges on the panel on Tuesday — Edward Prado, Edith Brown Clement and Catharina Haynes — were named to the Fifth Circuit Court of Appeals by former President George W. Bush.



JUSTIN SULLIVAN VIA GETTY IMAGES

Charles Cooper, lead attorney for proponents of Proposition 8, speaks to reporters at a news conference following a hearing at the Ninth Circuit Court of Appeals in 2010 in San Francisco, California.

At issue on Tuesday morning was the narrower question of whether the federal appeals court should leave Rosenthal's preliminary injunction in place. Cooper, who was once in the running to be President Donald Trump's solicitor general, argued that federal courts should abstain from exercising jurisdiction in the case. Cooper, also a friend of Jeff Sessions who is [representing](#) the attorney general in connection with the special counsel probe of alleged ties between Russia and the Trump campaign, said that defendants were given the "opportunity" to file what's known as a [habeas petition](#) challenging their detention, even though such a case-by-case process would long outlast the typical jail stay.

Cooper said that Harris County had been considering bail reform before the lawsuit was filed. He said it was "erroneous" for the lower court to find that there was no individualized assessment of defendants during the one- or two-minute-long bail-setting hearings, during which defendants were typically banned from speaking.

"There is individualized consideration given to individual defendants," Cooper claimed. He also said that Harris County has made changes to the system recently and given defendants more of an opportunity to challenge their bail.

The judges were difficult to read, posing critical questions to Cooper, Civil Rights Corps founder Alec Karakatsanis and two other attorneys who spoke before the court. Haynes, a former state district court judge in Texas, used the term “rubber stamp” to refer to the process by which bails were set, but she seemed concerned that under the injunction judges weren’t able to set bail for misdemeanor defendants in particular cases. She said the court should “want judges to act like judges” and use their discretion to make individual decisions.



RYAN J REILLY / HUFFPOST

Alec Karakatsanis the founder and executive director of Civil Rights Corps outside the Fifth US Circuit Court of Appeals on Tuesday

Haynes asked Karakatsanis what, precisely, in the U.S. Constitution required misdemeanor defendants to be released within 24 hours. She also asked whether anything would prevent defendants from falsely claiming they couldn’t afford their bail, and whether they could make the claim that they’re indigent even if they were spending money on “all sorts of ridiculous things.” But she bucked Cooper when he used the term “hearing” to describe a bail setting procedure during which defendants are reportedly banned from speaking.

“What is a hearing if you’re not going to listen?” she asked.

Not all of the judges in Harris County are on board with the county’s defense of the status quo. Harris County Judge Darrell Jordan, who [opposes](#) the cash bail system, was in the audience on Tuesday. Jordan [submitted](#) an amicus curiae brief to the federal appeals court, telling the judges that the injunction was “necessary to fix Harris County’s broken, unconstitutional bonding practices now.” Jordan told the court that as a defense attorney he’d seen “clients, incarcerated for weeks before trial because they couldn’t afford to bond out, lose their jobs, autos, and homes,” and heard defendants “protest their innocence, but plead guilty to get out on time served, rather than stay in jail.”



RYAN J REILLY / HUFFPOST

Judge Darrell Jordan of Harris County wants to bring an end to money-based bail.

In an interview after the hearing, Jordan said that Cooper gave the court the false impression that Harris County was actually holding bail hearings before a judge. Jordan pulled up an email on his phone that a Harris County Courts staff attorney had sent to judges Monday asking them to “ensure” they were completing in every case an order form that states that the defendant had waived a bail hearing. “Why are they sending this out to all of the judges to ensure that they’re doing this if everybody is having these hearings?” Jordan asked. “Nobody does it! Nobody fills out the forms! It’s not being done, nobody is having these hearings.”

Jordan said that Harris County officials had the “key to the bank” to fund their defense of the current system. “They have access to Harris County’s bank, and so they’re going to fight this forever,” Jordan said. He compared Cooper’s hourly rate, [reportedly](#) north of \$550 per hour, to the court-appointed lawyers in his court who he said get paid \$1,000 a week to represent five clients a day.

“What motivation do they have?” Jordan asked of Harris County judges. “They don’t want outsiders coming in telling them what they’re doing is wrong.” It’s a combination of wanting to maintain the status quo and maintain their egos, he said.

Rodney Ellis, a Harris County commissioner and former state senator who also supports bail reform, said the influence of the bail bond industry can’t be ignored. “It’s money,” he said. “Never underestimate the power of bail bondsmen.” Ellis also said that judges and high-ranking officials found it difficult to imagine themselves in the shoes of a poor person facing a misdemeanor.

“There’s a certain sense of insensitivity, because we’re talking about people that we don’t necessarily see at our birthday parties, at our churches, at the golf games,” Ellis said.

Jordan holds individual hearings with each defendant. He spoke of one recent case in which he set a lower bail after calling up a defendant’s father and seeing what he would be able to afford. “It is more work. It takes a lot more time. But that’s my responsibility,”

Jordan said. He said judges get paid enough money to work 50 to 60 hours a week, but were protective of their short work schedules and hesitant to put in the work. "They could do it if they wanted to," he said.

Karakatsanis said that anyone who looks at the case should conclude that it's not consistent with the Constitution or good public policy to keep people in jail because they can't pay.

"There's a fundamental flaw at the heart of their system in that people are being thrown in jail because they're poor, and not for any good reason," Karakatsanis said. "There's a reason that the other side wants to focus on side issues and procedural issues. It's because it's very, very hard to defend on the merits the way the system works."



Fifth Circuit Wrestles With Bail Policies in Houston Jails

CAMERON LANGFORD
October 4, 2017

(CN) – A panel of Fifth Circuit judges on Tuesday questioned whether a federal judge in Houston went too far in overhauling the bail policies of Texas’ biggest county by ordering it to release poor misdemeanor defendants from jail within 24 hours.

Harris County, with 4.5 million residents, is the third-most populous county in the United States and it’s going through expensive growing pains in its approach to criminal justice.

On one hand, county officials agree with a growing consensus across the United States that petty criminals should not languish in jail, possibly losing their jobs and custody of their children, or plead guilty to crimes they did not commit to regain their freedom, simply because they cannot afford bail.

Harris County started phasing in reforms in July geared toward granting more misdemeanor defendants personal recognize bonds, in which no fee is required to bond out of jail.

The county is fighting a federal class action that claims it unconstitutionally jails poor, low-level defendants, and has racked up more than \$4 million in legal fees fighting the case.

The latest chapter in the litigation came Tuesday, when a three-judge panel of the Fifth Circuit in New Orleans heard arguments from attorneys representing Harris County criminal judges and hearing officers, who preside over probable cause hearings in which bail is set.

Harris County is asking the Fifth Circuit to undo U.S. District Judge Lee Rosenthal’s preliminary injunction under which since early June the county has had to release misdemeanor defendants from detention on personal bonds within 24 hours after they sign an affidavit stating they cannot afford cash bail.

Rosenthal also ordered Harris County Sheriff Ed Gonzalez to release from jail all misdemeanor defendants who are not subject to immigration, mental health or family violence holds on personal recognize bonds if they have not had a probable cause hearing within 24 hours.

Chuck Cooper, with the Washington, D.C. law firm Cooper & Kirk, kicked off Tuesday’s hearing for Harris County, saying that Supreme Court guidance on comity — that federal and state governments respect each other’s laws — requires Rosenthal to step back and let county and state criminal judges address constitutional issues with the county’s bail system.

He said Texas law lets criminal defendants file pretrial habeas corpus petitions in which they can argue that their detention is unconstitutional. He said such cases would take four weeks to get to a state appellate court if a county criminal judge denies the petition

Fifth Circuit Judge Catharina Haynes questioned the practicality of a habeas petition for misdemeanor defendants, who often are sentenced to time served and released after a few days in jail when they plead guilty.

“In a case where the likelihood is your sentence isn’t even going to be two weeks, how meaningful is that procedure?” Haynes asked.

Lead plaintiff Maranda ODonnell sued Harris County in May 2016 after she was arrested on a misdemeanor charge of driving with an invalid license and a magistrate judge set her bail at \$2,500.

ODonnell, 23, says her detention put her at risk of losing a restaurant job she needed to provide for her young daughter. She got out of jail after a few days by paying her \$2,500 bail.

Her class action was consolidated in August 2016 with a similar lawsuit. ODonnell is represented by attorneys with Washington, D.C.-based Civil Rights Corp.

They obtained a preliminary injunction after arguing that Harris County relies too heavily on a preset bail schedule based on the charges, which does not adequately consider a defendant’s finances in refusing to grant personal bonds, in violation of federal equal protection and due process rights.

ODonnell’s attorneys say the county’s criminal judges rarely deviate from the bail set by the magistrate judges.

Haynes and Fifth Circuit Judge Edward C. Prado, both President George W. Bush appointees, asked Civil Rights Corp. attorney Alec Karakatsanis if Rosenthal’s order went too far into the jurisdiction of the county’s criminal judges.

“Here’s the problem I see: It looks like the judge attempting to solve the problem of the county court judges failing to exercise discretion and act as judges, but instead rubberstamping and just wholesale doing one thing, has flipped it to taking away all discretion and making them wholesale do the opposite. And is that really the right solution?” Haynes asked.

Harris County argued in a motion to stay that Rosenthal’s order effectively strips county criminal judges and magistrate judges of their authority to consider four other factors that judges are supposed to weigh under Texas law in setting bail, besides ability to pay, including the safety of the victim and community.

Haynes asked whether someone charged with a Class A misdemeanor for assault should be released from jail and treated the same way as a defendant facing a loitering charge under Rosenthal’s injunction.

Karakatsanis said Harris County can change its rules to favor pretrial detention for people charged with assault, but it chooses not to, which undermines its arguments about public safety.

“Nothing about Judge Rosenthal’s legal finding would prohibit Harris County from treating those people differently. ... If they wanted to tomorrow they could pass a new rule saying anyone charged with assault should be detained without bond until a hearing before a judge, until a judge could look at the person, issue nonfinancial conditions like a GPS, a stay-away order, a curfew, things like that,” Karakatsanis said.

“Harris County, for assault cases, has already decided they will release anyone charged with assault if they pay \$50 to a bondsmen or \$100 to a bondsmen, whatever 10 percent of the bail amount would be.”

Bail bondsmen typically charge a defendant 10 percent of the bail, which is subject to forfeiture if the defendant misses court hearings. This gives bondsmen incentive to track down wayward clients and bring them to court — and bondsmen are given great discretion in how they may do that.

“Harris County has already made policy judgments about public safety in those cases. That’s why some of the overheated rhetoric in this appeal about the danger to public safety rings so hollow,” Karakatsanis said.

Fifth Circuit Judge Edith Brown Clement, a President George H.W. Bush appointee, rounded out the panel and spoke little during the hour-long hearing.

The judges gave no indication of how or when they might rule. Another Fifth Circuit panel stayed Rosenthal's preliminary injunction as of May 12, but lifted the stay on June 6.



How Harris County's federal bail lawsuit spreads beyond Houston

Texas counties are watching to see how Harris County's fight against court-ordered bail practices will affect them.

by [Jolie McCullough](#) Oct. 2, 2017 12 AM



County officials and bail bond companies throughout the state are monitoring the federal lawsuit against Harris County's bail practices.
John Jordan / The Texas

The next chapter in Harris County's saga over bail practices is set to play out in federal court Tuesday morning, and officials involved in pretrial processes throughout Texas are holding their breath.

The state's most populous county is involved in a complicated fight over how its bail procedures impact poor misdemeanor defendants awaiting trial. A federal lawsuit questions the constitutionality of the county's pretrial system, where arrestees who can't afford their bail bonds regularly sit in jail — often until their cases are resolved days or weeks later — while similar defendants who have cash are released.

Bail is a legal mechanism to ensure defendants appear in court for their hearings. The most common practice is secured money bail, where judicial officers set a bond amount that must be paid by defendants in order to be released. The bond can either be paid to the court in full and then refunded after all court appearances are made, or, more commonly, paid through a bond company that charges a nonrefundable percentage — usually around 10 percent — but will front the total cost.

Last year, inmates filed suit against Harris County, saying they were wrongfully detained in jail simply because they were too poor to pay their bail bonds. The lawsuit covers all indigent defendants arrested on misdemeanors, like driving with an invalid license or shoplifting.

In April, U.S. District Judge Lee Rosenthal [issued a groundbreaking ruling](#), calling Harris County’s bail practices unconstitutional and ordering the release of almost all misdemeanor defendants from jail within 24 hours of arrest, regardless of their ability to pay the bond amount. The county, which has implemented many of its own reforms since the suit’s filing, has appealed the injunction at the U.S. 5th Circuit Court of Appeals, where oral arguments will be heard in New Orleans on Tuesday.

The ruling came down while the [Texas Legislature worked](#) — and ultimately failed — to pass bipartisan statewide reform for pretrial release practices. Some cities and states across the country have [reformed their bail programs](#), either on their own or after court rulings, to move away from money bail bonds and release more defendants on personal recognizance bonds, where inmates are released with no money due up front.

“At a minimum, the litigation in Harris County is going to change the dialogue, if not the policy, of all other Texas counties on [personal] bonds.”

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These reforms have taken place in jurisdictions that, like Harris County, routinely used money bail as “de facto detention orders against those financially unable to pay,” Rosenthal wrote in her ruling.

Both sides of the lawsuit recognize the legal outcome in Harris County could have nationwide repercussions for the American bail system. In Texas, counties with wide variations of pretrial practices are measuring their programs against the federal injunction.

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A question of due process

[Jail population reports](#) show that almost 75 percent of people in Texas jails have not been convicted. Bipartisan efforts to lower the rising number of poor defendants stuck in jail was a main topic of Texas Supreme Court Chief Justice [Nathan Hecht](#)’s address to the Legislature in February.

“Many who are arrested cannot afford a bail bond and remain in jail awaiting a hearing,” he said. “Though presumed innocent, they lose their jobs and families, and are more likely to reoffend.”

Hecht spoke as Harris County, the third largest in the nation, was embroiled in a lawsuit where a judge has now said it uses bail bonds to detain poor defendants without necessary due process safeguards. Under state and federal law, indigent misdemeanor arrestees can be detained on money bail “only in the narrowest of cases, and only when, in those cases, due process safeguards the rights of the indigent accused,” Rosenthal wrote.

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Before the court order, 40 percent of Harris County misdemeanor defendants remained in jail until their case was resolved, according to data from 2014 to 2016. The large majority of those people — 84 percent in 2015 and 2016 — pleaded guilty at the first opportunity and were usually released within a day based on time served, according to Rosenthal's ruling. Just less than half of defendants who were released on bond pleaded guilty during the same time. New numbers since the ruling were not yet available.

The county argues that its practices are constitutional because, under state law, a defendant’s ability to pay is only one of five factors to be considered when setting bail. Other things the county must consider are the nature of the crime and public safety.

"This newly-minted constitutional right to affordable bail applies to every misdemeanor arrestee, with minor exceptions, no matter how great their flight risk or how grave a danger they pose to the community or their victims," wrote Charles Cooper in the county judges' brief to the appellate court.

Rosenthal countered that argument by pointing out that even after county officials recommend release on personal bonds for misdemeanor defendants, based on their risk level of reoffending or skipping court dates, judicial officers usually ignore the recommendation and stick to a pre-set bail schedule.

Multiple complexities have entangled the lawsuit. The Harris county sheriff — a defendant in the lawsuit — was ousted in the last election and replaced by a successor largely in support of bail reform. And the county has implemented reforms of its own, including a new tool that will quickly identify low-risk defendants and recommend them for release on personal bonds, regardless of income.

Though Rosenthal applauded the county for its reform efforts (which were not yet implemented at the time of the ruling), she has said the problem of unequal treatment for poor defendants would still exist. Lack of money would still be an issue for moderate and high-risk defendants, and officials would still have discretion to ignore the recommendation of release on personal bond for low-risk people, she said.

Her orders went into effect in June, and [hundreds of defendants were released from the Harris County Jail](#). The county's reforms took place at the end of July, and officials could not yet give specifics on results.

County attorneys and the bail bond commercial industry say the order goes too far, and they are asking the federal appellate court to toss out the injunction and the case overall. They argue that the issue isn't one for federal courts and that the lawsuit is an attempt to get rid of money bail altogether.

"Defendants who cannot post bail are not detained because they are poor," wrote attorney Paul Clement in a court brief filed by local, state and national bail bonds groups. "Instead, they are detained because the government had probable cause to arrest and charge them with crimes, and wishes to secure their appearance at trial and protect the community."

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Beyond Harris County

Harris County is not unique in its imposition of bail bonds on poor defendants.

Pretrial practices vary widely by county, but almost all in Texas rely primarily on money bail to release defendants, according to [a study from Texas A&M University's Public Policy Research Institute](#). Harris County is one of the few that uses a validated risk-assessment tool to determine whether defendants should be released without paying.

Texas' [proposed legislation](#) this year, which passed out of the Senate but died before being brought to the full House for consideration, would have required counties to use a risk-based tool to determine bond.

"The basic underlying system in a lot of the other larger counties have the same fundamental flaws that Harris County does," said Jay Jenkins, the Harris County project attorney for the Texas Criminal Justice Coalition. "If you're using money bail for misdemeanor cases, and you're not explicitly having a determination of whether or not a defendant can make a particular amount, those counties are going to be susceptible to litigation after this ruling."

Changes have already started. [Dallas County authorized the creation](#) of a pretrial division and risk-based bail system this year, and Bexar County judges changed their practices to make all defendants eligible for a personal bond assessment, according to Young.

But most Texas counties don't have programs to monitor defendants released on bond, according to the Texas A&M study, and others, like Tarrant, are watching and waiting.

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THE URBAN EDGE

STORIES ABOUT WHY CITIES ARE GREAT, AND HOW THEY CAN BE BETTER, FROM THE KINDER INSTITUTE FOR URBAN RESEARCH

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October 2, 2017/Kinder Institute

Texas Tribune | Jolie McCullough



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Harris County's bail lawsuit spreads

By **Texas Tribune** – October 4, 2017



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“At a minimum, the litigation in Harris County is going to change the dialogue, if not the policy, of all other Texas counties on [personal] bonds,” said Michael Young, Bexar County’s chief public defender. Jail population reports show that almost 75 percent of people in Texas jails have not been convicted.

Monday, May 22, 2017



Cash Bail, a Cornerstone of the Criminal-Justice System, Is Under Threat

Bipartisan proponents of change argue system unfairly jails defendants who can't pay and frees violent ones who can

By
Nicole Hong and Shibani Mahtani

More U.S. cities and states are reducing their reliance on cash bail, rejecting the longstanding notion that money should determine whether arrested individuals are locked up until trial.

The movement is upending a cornerstone of the American criminal-justice system and threatening to deal the most severe blow to the multibillion-dollar bail-bonds industry since it began in the late 1800s.

In an overhaul that went into effect this year, [New Jersey began a new statewide bail system](#) that essentially eliminates cash bail, compelling judges to detain—or release—defendants before trial based on their risk to public safety, rather than their ability to pay. Voters in New Mexico passed a similar amendment to the state constitution late last year.



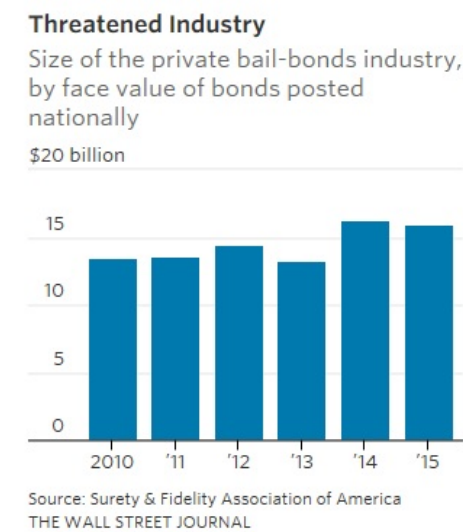
A minimum-security dormitory for nonviolent defendants at the Cook County Department of Corrections in Chicago. PHOTO: ALYSSA SCHUKAR FOR THE WALL STREET JOURNAL

In California and Texas, the two states where courts have historically set the highest bail amounts, lawmakers have introduced bills that would significantly change their bail systems. Starting July 1, judges in Maryland will have to consider alternatives to cash bail for nonviolent defendants.

Driving the overhaul efforts is a growing recognition by judges and others that the current system unfairly incarcerates people solely because they can't afford bail amounts as low as \$100, creating overcrowded jails at great cost to taxpayers. Others contend changing the system will improve public safety by preventing those charged with violent crimes who have access to cash from paying their way out.

Momentum for change is coming from both sides of the political aisle. Critics of cash bail range from [former Democratic Attorney General Eric Holder](#) to [Republican New Jersey Gov. Chris Christie](#).

In addition, nearly two dozen lawsuits have challenged the constitutionality of setting cash bail without considering an individual's ability to pay it, leading to new procedures in several places. Last month, a federal judge in Houston ordered Harris County, Texas, to stop detaining misdemeanor arrestees if they can't afford bail, finding the practice violated the Constitution's equal-protection rights against wealth-based discrimination. An appellate court is expected to review the case.



The private bail-bonds industry is resisting the push, arguing that a money deposit is still the best way to ensure a defendant's appearance in court.

Since at least 1835, judges in the U.S. have required arrested individuals to put down money, also known as a bail or bond, as an incentive to appear in court. Defendants who can pay are released, while those who can't remain in jail until trial or until they plead guilty. In most instances, the money is refunded after the cases are resolved, if the defendant makes every court appearance.

Judges typically set bail based on the severity of the charged offense, although bail practices vary widely by state and even by county. Many county judges still use bail schedules, which set dollar values for specific crimes, such as, in San Francisco, \$5,000 for driving with an invalid license.

In most states, those who can't make bail can hire a private bail bondsman, who will charge the defendant a nonrefundable fee in exchange for posting bail.

Nearly 500,000 people are awaiting trial in U.S. jails, most of whom are there because they cannot afford bail, according to the Pretrial Justice Institute, a nonprofit advocacy group. Since 1990, the number of defendants in jail awaiting trial has more than doubled, accounting for nearly 80% of the increase in the U.S. jail population, according to the most recent statistics from the Justice Department. Jails, unlike prisons, hold people awaiting trial or serving short sentences after conviction.

Bail and Jail

As bail amounts have risen, so has the proportion of people in jail who haven't been convicted.



Whether an accused individual should be deprived of his or her freedom before trial is one of the most important decisions in the criminal-justice system, judges said in interviews. One study showed that people who spend even three days in pretrial detention are more likely to plead guilty, lose their jobs, detach from their families and commit crimes in the future.

“If we are keeping in jail people on the basis of the accident of their wallet rather than on the basis of the risk they pose, that’s just complete irrational folly for us to do that as criminal-justice policy,” said Truman Morrison, a senior judge on the D.C. Superior court.

Those who argue the current cash-bail system allows dangerous criminals with access to money to roam free before trial point to defendants like 26-year-old Pierre Stokes of Chicago.



Pierre Stokes has been charged with shooting three people while out on bail. He is now being held without bail in Chicago’s Cook County jail, and has pleaded not guilty. At bottom, he holds a photo of his son. Photos: Alyssa Schukar for The Wall Street Journal(2)

In June 2015, Mr. Stokes paid \$9,000 to gain release from Cook County jail after he was arrested on a gun charge and aggravated assault. Less than a year later, while out on bail, he shot three people, police say. He is back in jail without the option of bailing out and has pleaded not guilty to the charges. In an interview in the jail's maximum-security ward, he said he has been wrongly accused.

"We continue to see violent offenders returning to the very streets they came from," said Cara Smith, chief policy officer for Cook County Sheriff Thomas Dart. His office is proposing legislation that would expand the circumstances under which prosecutors can detain someone without bail, including a wider range of gun offenses. The bill unanimously passed in the Illinois senate on May 5 and is being debated in the house.

Other bail critics contend the system leaves too many poor, nondangerous defendants spending long stretches in jail without any finding of guilt or innocence.

Johnnie Smith, 41, who police say had no history of violence and a below-average IQ, spent 534 days in Cook County jail because he couldn't afford to pay a \$100 bond after stealing a television from a friend's house. He pleaded guilty and served just 13 more days because of his long stretch of pretrial detention.



A prisoner is escorted to his cell at the maximum-security ward of Cook County jail in Chicago, where suspects charged with violent crimes are held. PHOTO: ALYSSA SCHUKAR FOR THE WALL STREET JOURNAL

Instead of using cash bail, many jurisdictions are now releasing low-level offenders and using phone calls to remind them of court appearances. For higher-risk defendants, courts often use electronic monitoring, including ankle bracelets, and require in-person check-ins.

Advocates of reducing the use of money bail point to practices in Washington, D.C., and in federal courts as possible models.

The District of Columbia in 1992 became the first jurisdiction in the U.S. to eliminate cash bail. Last year, almost 95% of individuals arrested there were released without posting money, while the others were detained after being deemed a high risk to public safety. Among the released individuals, 88% made every court appearance, and 89% weren't rearrested during their release, according to the D.C. Pretrial Services Agency, which supervises defendants awaiting trial. Only 1% of those released were rearrested for a violent crime.

Federal courts hardly ever use cash bail. Under the federal system, defendants can be detained without bail if the government provides evidence the individual poses a flight risk. Judges can set conditions of release, such as requiring the defendant's family members to cosign a bond, often backed by property, in which they would forfeit their assets if the defendant fails to appear in court.

Researchers have estimated that jailing someone frequently costs taxpayers between \$80 and \$150 a day, while monitoring a defendant released pretrial costs between \$5 and \$15 a day. The Pretrial Justice Institute estimates the U.S. spends at least \$14 billion a year on pretrial incarceration.

Mecklenburg County, N.C., had planned to raise \$240 million in 2009 to fund a new jail, but the jail population fell so much after the county began changing its bail practices that year the new facility no longer was needed.

Some sheriffs have raised concerns that eliminating cash bail will reduce public revenue. In Illinois, which doesn't allow private bail bondsmen, county governments retain 10% of every bond paid even if a bond is refunded or charges are dropped.

Brian McFadden, a county administrator for Sangamon County, Ill., said funds from bail payments contribute \$200,000 to the county budget. Defendants who use the jail and court system should share the cost burden, and paying bail is a way for them to have "some skin in the game," Mr. McFadden said. The county, he said, has begun releasing nonviolent suspects without bail, under supervision.



Inmates in a dormitory for nonviolent offenders at the Cook County Department of Corrections. PHOTO: ALYSSA SCHUKAR FOR THE WALL STREET JOURNAL

Opponents of overhauling bail say detaining defendants solely based on their risk to public safety is unrealistic. Judges won't have adequate time or evidence to determine whether an individual poses a flight risk, they say, increasing the likelihood that too many people will be released.

New Jersey's new pretrial system allows judges to decide whether a defendant should be released based on a score calculated from the defendant's criminal history and other factors. Critics have [protested some recent release decisions](#), saying the scoring system overlooks factors such as the defendant's juvenile criminal history.

Christopher Wilson, a 20-year-old registered sex offender who was arrested in January for allegedly soliciting sexual favors from an 11-year-old, had been released by a state judge after receiving a low score under New Jersey's new bail system. After local prosecutors appealed the decision, the judge in March ordered Mr. Wilson detained until trial. He has pleaded not guilty.

Mr. Wilson's case became part of New Jersey's bail debate. Advocates of overhauling bail say his return to jail shows the process gives judges the flexibility to change their release decisions. Bail-bonds industry lobbyists say the case shows the new system is causing local residents to fear for their safety.



Kirk Shaw, a bail bondsman in Hackensack, N.J., laid off several employees after changes to the state's bail system hurt his business. PHOTO: BRYAN ANSELM FOR THE WALL STREET JOURNAL

Jeffrey Clayton, executive director of the American Bail Coalition, a trade association for insurance companies that underwrite bail bonds, said it would be a “make-or-break year” for cash bail. Earlier this year, he traveled to six state capitals—in California, Nevada, Connecticut, New York, Colorado and Texas—in 11 days to try to stop overhaul efforts.

He said he is hopeful the Trump administration will slow momentum for changing bail procedures, including by cutting back on Justice Department grants that help jurisdictions experimenting with new bail systems.

A spokesman for the Justice Department declined to comment.

Bail agents are pouring money into lobbying. Since 2011, bail-bonds companies and insurers have donated more than \$288,000 to the campaigns of Maryland state legislators, including the chairman of the Senate Judicial Proceedings Committee. The state senate recently passed a bill undercutting a court rule that sought to eliminate cash bail in Maryland.

Kirk Shaw, a bail bondsman in Hackensack, N.J., said business is the worst it has been since he joined the industry in 1980. He has gone from six full-time staffers last year to two part-timers this year.

“We have very little business at all,” he said. “No one is coming in.”

Write to Nicole Hong at nicole.hong@wsj.com and Shibani Mahtani at shibani.mahtani@wsj.com



Around the Nation

Report Calls California's Bail System 'Unsafe And Unfair' And Recommends It Be Reformed

October 24, 2017 4:50 PM ET
Heard on [All Things Considered](#)



[Eric Westervelt](#)
[Twitter](#)

An influential judicial panel recommends that California abolish commercial bail, declaring it "unsafe and unfair." The panel's report, released today, says bail should be replaced with a risk assessment system and expanded pre-trial services.

TRANSCRIPT

ARI SHAPIRO, HOST:

States are facing calls to move away from a bail system based on money. Detractors say that system is unjust. In the nation's largest state court system, California, a report out today calls the commercial bail system unsafe and unfair. The study recommends that it be abolished and replaced with a system that includes robust safety assessments. NPR's Eric Westervelt reports.

ERIC WESTERVELT, BYLINE: The yearlong study by a work group created by California's chief justice, Tani Cantil-Sakauye, argues that the state's current money bail system largely bases a defendant's liberty on his or her finances, not an in-depth assessment of whether the defendant is a flight or safety risk. Those with means awaiting trial often have the ability to pay their way out, while most low-income people simply do not. Martin Hoshino is with the Judicial Council of California.

MARTIN HOSHINO: Therein lies the fundamental fairness issue of, is there a two-tier justice system that is operating here?

WESTERVELT: Today's report says it is. Supporters of reform say sweeping changes are overdue. The state has among the nation's highest bail rates, or schedules, and high rates of people who don't show up to court. Natasha Minsker with California's ACLU says more than half of the people in the state's jails are awaiting trial or sentencing but simply don't have the money or property to get out on bail.

NATASHA MINSKER: It's really, actually a very strange system where we are allowing private companies to make profits off of people's freedom.

WESTERVELT: But some prosecutors, judges and the bail industry argue that cash bail is an important tool. Jeff Clayton directs the American Bail Coalition, a trade group. He agrees reforms are needed. Bail rates in the state are too high, he says, and low-level offenders with low incomes should not wallow in jail. But Clayton calls the report's recommendation to phase out commercial bail extreme.

JEFFREY CLAYTON: That's going too far. The bill should remain as an option, and then the question becomes, in what cases and how often should it be used?

WESTERVELT: California's governor, the judiciary and lawmakers have agreed to tackle those questions when the legislature reconvenes in January. And today's report puts significant judicial weight behind those efforts - what's likely to become the nation's biggest experiment in moving away from commercial bail. Eric Westervelt, NPR News, San Francisco.

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Law

California's Bail System Is 'Unsafe And Unfair,' Study Finds

October 25, 2017 11:19 AM ET
Heard on [All Things Considered](#)



[Eric Westervelt](#)
[Twitter](#)



Bail bonds offices are seen across from the Hall of Justice in San Francisco in 2015. A new report from a California judiciary working group recommended the phasing out of cash bond.
Eric Risberg/AP

The national effort to get states to move away from a bail system based on money — something detractors call unjust and antiquated — got a big boost this week: [A yearlong study](#) backed by the California's Chief Justice recommended money bail be abolished and replaced with a system that includes robust safety-assessments and expanded pretrial services.

Calling the state's commercial bail system "unsafe and unfair," a working group created by California's Chief Justice Tani Cantil-Sakauye argues that the state's bail system bases a defendant's liberty too much on his or her finances, rather than an assessment of whether the defendant is a flight or safety risk.

"Therein lies the fundamental fairness issue of, is there a two-tier justice system that is operating here?" asks Martin Hoshino, who heads the Judicial Council of California, which is an advisory and policymaking council of the state's courts.

This week's report says those of means awaiting trial often have the ability to pay their way out, while most low-income people simply do not.

"These recommendations reflect the overwhelming belief that wealth-based justice is not justice at all," says Assemblyman Rob Bonta, D-Oakland, who along with state Sen. Bob Hertzberg, D-Van Nuys, co-authored [a bill](#) proposing big changes to cash bail.

"For too long, California has forced people who don't pose a threat to the public and who have not been convicted of a crime to sit in jail and face losing their jobs, their cars, their homes and even their children if they can't afford to buy their freedom," Rep. Bonta says.

State lawmakers have pledged to take up bail reform when the California legislature reconvenes in January, and it also has the backing of the state's governor, Democrat Jerry Brown. This new report puts significant judicial weight behind those efforts — which are likely to become the nation's biggest experiment in moving away from commercial bail.

The report recommends a phase-out of a money-based bail system, replacing it with a risk-based pretrial assessment that uses a computer algorithm and judicial discretion; expansion of preventive detention for the most dangerous cases; and expansion of pretrial services in every county. The latter could include monitoring compliance with a defendants' release conditions, anger management counseling, and reminders to people to show up on their court date.

If the changes are enacted, California [would join New Jersey](#) in making sweeping changes to cash bail. New York City also has [done away with cash bail](#) for defendants who are accused of low-level or nonviolent crimes.

Cantil-Sakauye said she heartily backs the panel's recommendations, adding that the state's current pretrial system unnecessarily compromises victim and public safety.

"This report should serve as a framework as we work with the governor and the legislature to address these issues that are central to our values and responsibilities of providing fair and equal access to justice for all Californians," she said.

'A very strange system'

Supporters of reform say sweeping changes are overdue: The state has among the nation's highest bail costs or 'schedules,' and high rates of people who don't show up to court.

"It's really actually a very strange system where we are allowing private companies to make profits off of people's freedom with no concern for public safety," says Natasha Minsker, who directs the ACLU of California's Sacramento office.

The state's jails are filled, she says, with people who simply don't have the money or property to get out on bail.

"Upwards of 60 percent of the people in California's jail are awaiting trial or awaiting sentencing, and they're there because they couldn't afford to post bail," Minsker says. "So the bail system in California is not working from a justice perspective. And it's not working from a safety perspective. Cash bail is failing at its basic jobs."

The industry view: Reforms justified, but abolition 'too far'

Some prosecutors, judges and the bail industry argue that cash bail remains a vital tool that has worked well, especially in the most difficult cases.

"I think the bail industry and the research shows we do our best work, in terms of reducing long-term fugitive rates and returning people to court when they flee, in high-risk felony cases," says Jeff Clayton, director of the American Bail Coalition, a trade group. "We don't prevent people from committing crime, but neither do any of the other types of release."

He agrees reforms are warranted: Bail rates in the state are too high, he says, and low-level offenders with low incomes should not wallow in jail. But Clayton calls the report's recommendation to phase-out commercial bail extreme.

"That's going too far," he says. "Bail should remain as an option — and then question becomes, in what cases and how often should it be used."

Backers of commercial bail also warn that California risks trading cash bail for ankle bracelets and constitutionally dubious expansion of preventive detention. And they believe the abolition of

money bail would prove contrary to the state's Constitution provision that defendants have a right to bail under "sufficient sureties."

They argue that such sweeping changes would require a state constitutional amendment, something on which the judicial report is silent.

Shelley Curran, director of criminal justice services with the Judicial Council of California, isn't so sure. "'Sufficient sureties' has not been defined either by case law, statute or the constitution," she says.

Costly changes

Many bail reform details remain to be worked out in political battles ahead in Sacramento when lawmakers reconvene, including the cost of expanding pretrial services across the state. Rough estimates are that reforms will cost several hundred million dollars.

Martin Hoshino with the state courts' advisory council says it's foolhardy to think that you can implement sweeping reforms across a state as large as California "and not get those better outcomes for public safety, those better outcomes of more fairness for people, if it's not properly funded."

But it is clear California is moving toward comprehensive change that will have far-reaching implications across its criminal justice system in how it handles defendants charged with a crime but awaiting their day in court.

"The status quo has had a devastating impact on low-income communities and people of color in California without regard to public safety or helping ensure court appearances," said Margaret Dooley-Sammuli, criminal justice and drug policy director with the ACLU of California. "As momentum for reforms grows nationwide, now is the perfect time for California to act. We look forward to working with all three branches of California's government to ensure that all — not just the wealthy — have access to justice."



California Bail Reform: Risk Assessments Instead of Bail

October 24, 2017 By Stephen Frank

If the Chief Justice of the Supreme Court is allowed to have her position, criminals will not have to put up money for bail, just a promise they will appear. That is the same promise made by illegal aliens when told they need to attend a hearing—only 7% actually show up.

“Advocates for bail reform have cited the fundamental unfairness of keeping people in jail simply because they are poor. Unfortunately, opponents point out, often lost in the discussion is the fact that the individuals in question have been accused of a crime. Charges are leveled only after law enforcement and a judge determines there is probable cause. They also point out that the cost of bail is directly scaled to the level of the offense.”

Just as Democrats want illegal aliens protected from the Feds, they also want criminals back on the street as soon as possible.



California Bail Reform: Risk Assessments Instead of Bail

By Jeff Clayton, American Bail Coalition, 10/25/17

A workgroup established by California’s Chief Justice Tani G. Cantil-Sakauye to study the state’s bail system, issued a slate of recommendations today (Tuesday, 10/24). It stated that cash bail should be replaced by a pretrial release program based on risk assessment that determines the probability that a criminal defendant is likely to show up for their court appearance and that they pose minimal risk to public safety.

<https://newsroom.courts.ca.gov/news/chief-justice-workgroup-money-bail-is-unsafe-and-unfair>

The recommendations add another controversial element to the topic of bail reform in California, as well as nationally. The California legislature is currently locked in a battle on the topic, with Senate Bill 10 (which proponents had hoped to get passed last month), having been delayed two years after strong pushback from prosecutors and law enforcement organizations.

Advocates for bail reform have cited the fundamental unfairness of keeping people in jail simply because they are poor. Unfortunately, opponents point out, often lost in the discussion is the fact that the individuals in question have been accused of a crime. Charges are leveled only after law enforcement and a judge determines there is probable cause. They also point out that the cost of bail is directly scaled to the level of the offense.

Public safety is one of the key factors mentioned by those concerned about a radical overhaul of the existing cash bail system. In jurisdictions where bail reform has recently been instituted, there has been evidence of an increase in violent crime. For instance, in New Jersey, where cash bail was abolished earlier this year, a young man was shot 22 times by a career criminal who had been released just three days after being arrested on a weapons charge. And in Texas, a man arrested for looting a liquor store was released on his own recognizance despite having been arrested 10 times this year for a variety of offenses, including burglary, trespassing, theft and possession. On the earlier charges, he failed to appear in court numerous times.

Opponents also mention the use of risk assessment, which they feel is one of the primary flaws of bail reform. Using an algorithm, it determines who is “dangerous” and stays in jail, versus who is “safe” and allowed to go free while they await trial. The problem, they say, is that it is an either/or system with no human judgement involved. In a horrific case in Albuquerque last year, Michelle Martens participated in the methodical drugging, rape and murder of her 10-year-old daughter, Victoria, by her boyfriend and his cousin. Although Martens was arrested and held with no bail (her trial is still pending at this time), New Mexico subsequently instituted bail reform. Under the new laws, Martens would have been eligible for immediate release, as the risk assessment tool, based only on an algorithm, would have determined she was low-risk and therefore, not a risk to public safety. New Mexico Governor Susana Martinez, an opponent of bail reform has expressed outrage and is working to overturn laws in her state.

Another significant component to bail reform is the cost to taxpayers. Proponents often mention that freeing criminal defendants saves money through a reduced need for jails and associated administrative costs. But those opposed say that the amount spent in administering what is basically a free government-operated bail system — minus the revenue from bail fees — more than offsets any cost savings. These costs include creating an expensive infrastructure to monitor and track individuals who have been released.

About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

ALBUQUERQUE JOURNAL



Guest Columns

New Mexicans should demand bail amendment

By Jeff Clayton / Executive Director, American Bail Coalition

Friday, November 17th, 2017 at 12:02am

The Albuquerque Journal's (Oct. 29) editorial regarding bail reform for New Mexico concluded there is no necessity for another constitutional amendment on the issue. Inadvertently, it actually proves the point that there is a dire need for one. Justice Charles Daniels and the state's Supreme Court have shown they cannot be trusted. Without an edict from the people enshrined in New Mexico's Constitution, there is every reason to believe they will continue their reckless legislating from the bench.

Despite the fact that the Supreme Court is duty-bound to address the issue, the notion that justices actually listen to the executive or legislative branches is unfortunately a pipe dream – they haven't yet listened at all.

In fact, Daniels personally lobbied for the controversial no-money bail systems used by New Jersey and Washington, D.C., during the 2016 New Mexico legislative session. He lost his bid, but what was created instead was a far superior hybrid, bipartisan compromise. It was comprised of simple, basic adjustments at both ends of the system and largely left the old system intact in the middle. On the one hand, there would be more people detained without bail, which ultimately did not occur. On the other, language was inserted that would guarantee the right to a speedy bail review based on indigency so people would not languish in jail. If it had been implemented, it would have meant that an individual would have the right to full due process to make his or her argument and then have a judge rule on the claims. It would not mean that a defendant who is unable to post a bail would automatically be released – which is what Daniels wanted and implemented.

While not perfect, I wrote an op-ed that was published in the Journal at the time in support of the amendment. What New Mexicans wound up with instead was Justice Daniels' no-money bail system, which was ramrodded down their throats.

Daniels has incorrectly stated that changes to the state's constitution were required due to federal court decisions. Despite that assertion, out of the entire nation, only New Mexico actually made constitutional changes based on alleged court cases.

In reality, the U.S. Justice Department, under both Presidents Obama and Trump, in various cases over the last two and a half years have concurred that the use of bail schedules is constitutional. It has also supported the premise that there is no general right to affordable bail, provided a judge reviews a case within 48 hours so that defendants can inform the court as to their specific situations.

A new constitutional amendment is needed to bring permanence and sanity to New Mexico's system. When the court of last resort gets into the business of changing the Constitution on its own accord, it's fair to say there is a problem and traditional solutions are not going to work.

If the Supreme Court can simply ignore the will of the Legislature and the voters, it is not a reach to conclude that it will simply declare any acts by the governor or Legislature as inconsistent with its decisions as it takes its self-appointed dictatorial powers to new levels.

The only way to guarantee that meaningful change gets done is to set in constitutional stone what bail policy in New Mexico will be for the next generation. In the process, it must completely shut the door on ivory-tower Supreme Court justices who ignored the will of the people and their elected representatives, lobbied issues of substantive law in violation of their duties, violated their oath to uphold rather than change the Constitution, and implemented their own social experiments from the bench. New Mexico needs protection from these justices, as well as the repeat criminals they seem so eager to protect.

The Salt Lake Tribune

Utah judges want to know more about defendants before they set bail — but lawmakers are not so sure



By Jessica Miller • November 20, 2017

Within 24 hours after a person is arrested, judges across Utah must make a decision: Should the suspect be required to pay money — and how much — to get out of jail until trial?

It's not a decision that is taken lightly, says Judge Todd Shaughnessy, but it does have one major problem.

"As things stand right now, we have to make that decision with basically no information," the 3rd District judge said in a recent interview.

Defendants can either pay the full bail amount set by a judge in cash, or they can pay a smaller bond to a bail bondsman, who then pays the bail amount to the court. The goal in setting bail amounts is to ensure that a defendant is not a safety risk to the public and that the defendant will show up for court dates.

But oftentimes, judges make that decision based on only one source of information: a probable cause statement filed by a police officer. Sometimes, that can be a mere sentence, such as, "Suspect was in possession of heroin, field test positive."

"Because we don't have anything else to go on, we default to the bail [amount] schedule," Shaughnessy said. "That's fine for some people, if you have money and can make bail. But if somebody doesn't have money to pay a bail bondsman, is someone staying in jail and remaining in jail because they're poor? And if they are, is that fair?"

A new screening process that would give Utah judges more information about defendants, including criminal history and a person's history of skipping court, was expected to be implemented this week. But court officials have opted to delay the new process after Utah lawmakers expressed concern that the courts were making changes without their input. And the bail bond industry is fighting against the new screening tool.

During a September hearing, legislators passed a motion asking that the courts postpone the changes until they can be considered by lawmakers in the upcoming legislative session. Also, legislative leaders in October penned a letter to Utah Supreme Court Chief Justice Matthew Durrant asking for a delay.

The letter, signed by both Senate President Wayne Niederhauser, R-Sandy, and House Speaker Greg Hughes, R-Draper, noted that in eight other states where similar reform was implemented, the legislatures had authorized the changes.

[Letter to Chief Justice Matthew Durrant by The Salt Lake Tribune on Scribd](#)

Initially, court officials planned to move forward, but now they say they'll work with legislators and others before launching the program.

In a response letter, Durrant wrote to the legislative leaders that the courts decided to pause the measure to provide more information to lawmakers, who he believes have been fed “misinformation” from bail bond industry representatives.

[Letter to Utah legislative leaders by The Salt Lake Tribune on Scribd](#)

‘Sort of a no-brainer’

The public safety assessment is a two-page automated report about a defendant, which includes his or her background information, failure-to-appear records and history of violent offenses. The report then rates a defendant on a scale of one to six on the likelihood of missing a court date and the likelihood that he or she would commit “new criminal activity.”

It then recommends a release type: release on own recognizance, release with special requirements or detain. A judge, however, makes the ultimate decision on the conditions of any release — and whether posting money for bail will be a requirement.

FACTORS CONSIDERED IN THE PUBLIC SAFETY ASSESSMENT

- Age at current arrest
- Current violent offense
- Pending charge at the time of offense
- Prior misdemeanor conviction
- Prior felony conviction
- Prior violent conviction
- Prior failure to appear in the past two years
- Prior failure to appear older than two years
- Prior sentence to incarceration

Source: Utah State Courts

The assessment was developed by the John and Laura Arnold Foundation, a Texas nonprofit that works on criminal-justice reform.

State court officials say this report won't eliminate money bail in Utah, and it won't stop judges from ordering that a bond be posted to get out of jail. And because rural areas don't have the same pretrial services setup that places like Salt Lake County does, they say cash bail will remain an integral part of Utah's criminal-justice system.

Shaughnessy said, to him, the issue boils down to whether judges should have more information available before making important decisions about bail that could have lasting effects on someone's life.

“That's sort of a no-brainer,” he said. “Why would you not want judges to have more information?”

‘A wave of crime’

The most vocal opponents of the pretrial risk assessment have been representatives of the bail-bonds industry. They have warned legislators that with the new protocol, jails will become revolving doors for criminals.

Jeff Clayton, executive director for the American Bail Coalition, told legislators during a September interim hearing that the automated reports are almost always too lenient.

“The biggest problem is that it never recommends bail,” Clayton said. “It always recommends release.”

Clayton said later in a statement that the proposed tool is flawed and applauded Utah legislators who “concluded that it was time to stop the implementation before it unleashed a wave of crime in Salt Lake City.”

Those locally in the bail bonds industry expressed similar concerns, saying they worry there was a lack of transparency in selecting the tool and that more study should be done about its use in other states. Bail bondsmen fear the new tool would “dismantle the bail bond process,” said Wayne Carlos, with the Utah Association of Professional Bondsmen and Agents.

And while a 2017 legislative audit found Utah’s failure-to-appear rate in 2015 was about 26 percent for those who went through a bail bondsman — but only 17 percent if cash bail was posted — bail enforcement agents say they go after those clients, rearrest them and bring them to court. And, they add, it’s at no cost to taxpayers.

“Trust and believe, a lot of them are repeat customers,” said Dyon Flannery, a Utah bail enforcement agent. “We know the people who we are dealing with.”



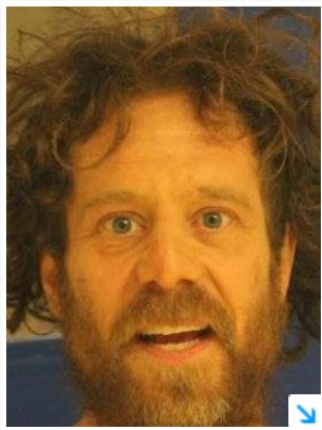
By Jessica Miller • One day ago

Record Searchlight

PART OF THE USA TODAY NETWORK

Would bail reform have prevented the Rancho Tehama rampage?

[Alayna Shulman](#), Record Searchlight Published 4:51 p.m. PT Nov. 22, 2017



(Photo: Tehama County Sheriff's Office)

Then-Rancho Tehama residents Hailey Poland and Diana Steele knew a jail wasn't going to protect them from their neighbor, Kevin Janson Neal.

Neal's mother had posted bail for him to get out after attacking Steele and stabbing Poland, her son's girlfriend, so the women got restraining orders against him.

But 10 months and numerous 911 calls later, the court order didn't do any good: Apparently nurturing a grudge against the entire neighborhood, Neal murdered Steele and her son, Danny Elliott, before taking his rampage into town and killing two others on Nov. 14. Neal also killed his wife the day before and wounded a dozen others,

deputies have said.

With debate over the state's money-bail system already roiling in California as a bill to reform it floats through the Legislature, Neal's freedom after the Jan. 31 incident with Steele and Poland is, for some, a case study on why the system needs to change.

Others are calling into question how much effort actually goes into monitoring offenders known to be violent and have access to guns after the rampage.

"I lost two very important people in my life because the cops didn't want to deal with it and basically left it up to us to handle things," Poland told the Record Searchlight via Facebook. "And now my boyfriend and his mom are gone."

The current bail system allows judges to keep someone behind bars if they decide the defendant is too dangerous to get out, or under certain other circumstances, like if the defendant has shirked court dates one too many times.

Talk of state Sen. Robert Hertzberg's bill, Senate Bill 10, centers largely on making sure poor but relatively harmless criminals have a fair shot. But the flip side to that is cases like Neal's, where someone violent enough to be barred from owning guns through two restraining orders manages to get out because his family put up the money.

Neal's bail for numerous felony charges related to the Jan. 31 attack was set at \$160,000, the result of the bail schedule for the various charges tallied together. District Attorney Gregg Cohen has defended the amount, saying the constitution affords for bail.

"Everybody's going to look at the judge who let him out on bond and say, 'You should have kept him locked up.' But they don't have any way to tell, either," said Richard Cooter, director of the forensic

psychology program at George Washington University. "You can't keep all those people on bond. I don't know the judge, but I feel sorry for him already."

A representative from Hertzberg's office said it's hard to say whether the requirements of the would-be law would have stopped Neal from getting out, but he would have at least had to undergo a stringent risk assessment.

"Tragedies like this illustrate what we have been saying all along: The present money bail system doesn't protect the public as it should," a statement from Hertzberg's office reads. "We must take action to reform this system that keeps people in jail because of their inability to afford bail, rather than how dangerous they are to the community."

But Jeff Clayton of the American Bail Coalition said he doubted the law would have kept Neal in jail. Clayton also questioned the reliability of assessments in general.

"They don't capture all this stuff," he said. "So what happens when the same computer that lets (someone who shouldn't) get a gun lets him get out on bail?"

Since Tehama County Assistant Sheriff Phil Johnston has said officers responded to calls about Neal numerous times and he wouldn't come to the door, Clayton said Neal's case illustrates a different problem.

"I just think it seems like the police didn't follow through with all the things that were supposed to happen with this guy," Clayton said. "It sounds like there's a lot more breakdowns than just bail."

CALIFORNIA ★ POLITICAL
REVIEW

Overwhelming Majority of Judges Nationwide Disagree with Chief Justice Cantil-Sakauye's Ill-Conceived No-Money Bail Plan

December 4, 2017 By Stephen Frank

Great news for criminals in California. They already have Prop. 47 and 57 protecting them, AB 109 to get them out of jail very early, in San Diego juvenile criminals won't even go to jail thanks to "restorative justice", now the chief Justice of the California Supreme Court has promoted a NO cash bail system—use an algorithm and let someone out without bail. This is the system illegal aliens use—get caught, told to attend a hearing in 3-4 years and then they disappear.

"Touted as providing for greater fairness, adopting the New Jersey system in California would not only create a public safety nightmare, it would require over \$1 billion to implement. Despite the claim that moving to no-money bail would save enormous amounts of taxpayer money, Cantil-Sakauye has already acknowledged that any such savings would not come close to providing the revenue to support it.

Of course, judges are more concerned about upholding the law than they are about fiscal matters. So why did two-thirds of those polled come out against eliminating cash bail? It might be best summarized by comments from one judge, which were included as part of the survey, "The bail system is a time-tested, fair, constitutional system of reducing jail population and the attendant costs to the county while ensuring the criminal defendant appears in court. The idea of an individualized, 'threat-based' assessment of each defendant in our already overburdened courts is, at best, naïve and, at worst, dangerous."

So, after spending one billion to protect criminals, you will be less safe. This from someone supposed to uphold the law and protect us. Criminal action? Conspiracy? Seems like the Chief Justice is part of the crime problems of California—and proud of it.



Overwhelming Majority of Judges Nationwide Disagree with Chief Justice Cantil-Sakauye's Ill-Conceived No-Money Bail Plan

By Jeffrey J. Clayton, Executive Director, American Bail Coalition, California Political News and Views, 12/6/17

California Chief Justice Tani Gorre Cantil-Sakauye made headlines recently when she touted her shiny, new, no-money bail system. Claiming extensive judicial support of her pet project, mostly lost in her grandstanding was the fact that the majority of judges were anything but positive about this core concept of bail reform. In fact, in a recent national poll conducted by the National Judicial College, a resounding 69% of judges declared “no,” when asked if the money-based bail system should be eliminated.

Falling in line with the high-decibel calls to abolish bail from organizations including the Pretrial Justice Institute and the Arnold Foundation, Cantil-Sakauye has fixated on the contrived public hysteria over the notion of the inherent injustice of the money bail system. Inexplicably, they share the unified ambition to emulate New Jersey's newly-installed bail system, which has already shown to be at least controversial, if not an outright disaster. It kicked-in on January 1 of this year and eliminated cash bail in favor of publicly-funded pretrial release. However, it has since been cited as the cause of an increase in violent crime in the Garden State.

Touted as providing for greater fairness, adopting the New Jersey system in California would not only create a public safety nightmare, it would require over \$1 billion to implement. Despite the claim that moving to no-money bail would save enormous amounts of taxpayer money, Cantil-Sakauye has already acknowledged that any such savings would not come close to providing the revenue to support it.

Of course, judges are more concerned about upholding the law than they are about fiscal matters. So why did two-thirds of those polled come out against eliminating cash bail? It might be best summarized by comments from one judge, which were included as part of the survey, “The bail system is a time-tested, fair, constitutional system of reducing jail population and the attendant costs to the county while ensuring the criminal defendant appears in court. The idea of an individualized, ‘threat-based’ assessment of each defendant in our already overburdened courts is, at best, naïve and, at worst, dangerous.”

When it comes down to it, the primary reason judges across the nation are adamantly against the abolishment of bail is remarkably straightforward: it works and works well.

More than one judge in the survey opined that other pretrial release methods such as signature bonds or return-on-own-recognizance did not deliver the same high-level results as secured bonds. “Money talks, and it gets people to court,” commented one judge anonymously, a sentiment that was echoed by an overwhelming number of others who responded in the report.

Equally significant was the 31% of judges who answered “yes” to whether money-based bail should be ended. Far from effusive in the support of their position, many actually hedged when asked to expound on their feelings. The report indicated, “Many judges critical of money bail wrote that they favor modifying the system rather than abandoning it. Other judges prefer a hybrid system where they retain the option of setting money bail when necessary but can opt for other release and pre-trial programs as well.”

The use of risk algorithms embraced by Cantil-Sakauye in the setting of bail also came up as part of the report. Judges expressed skepticism as to their effectiveness, with one writing, “The idea of an individualized, ‘threat-based’ assessment of each defendant in our already overburdened courts is, at best, naïve and, at worst, dangerous.” The report concluded that “the software used for risk assessments is not reliable enough to make detention decisions.”

The present system of pretrial release should be modified as needed by examining and evaluating individual states and local jurisdictions — a premise with which more than two-thirds of judges are in agreement. A possible component of this overhaul might be the creation of a hybrid system. State and local policy-makers would look at dangerous defendants from the top-end of the system, while dealing with lower-level offenses from the bottom-end.

Other alternatives to bail include providing judges with the option of redirecting defendants to drug treatment or mental health facilities where applicable. By doing so, judges could offer bona fide alternatives and move beyond simply working off a computer-generated score created by a risk assessment algorithm.

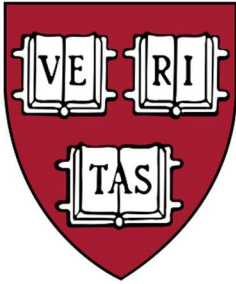
While perhaps well-meaning, Chief Justice Cantil-Sakauye lack of thorough research was in clear evidence when she chose to embrace the pro forma no-money bail language used in jurisdictions where it had already revealed its failings. She compounded her poor decision-making by then delivering a nearly-identical report for California, warts and all. She chose to ignore the fact that judges throughout the nation had already rejected the exact plan she was attempting to shove down the throats of citizens. Judges — the men and women who know its possibly deadly ramifications better than anyone else — do not believe that no-money bail is the answer to bail reform. We can only hope that elected officials in California can see with the same clarity if they are to fulfill the oaths they took to serve the best interests of their constituents.

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About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as a licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

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HARVARD
UNIVERSITY

Framing Bail Reform in New Jersey

Elena Schwartz

12/12/17

I affirm my awareness of the standards of the Harvard Honor Code. _____

Introduction

The American legal system has long used cash bail, a sum of money paid to a court in exchange for the release of a defendant who has been arrested, as a means of keeping communities safe and ensuring that justice is served. Bail is intended to incentivize the accused to await their trials behind bars where there is no threat that they will commit further crimes – or if they choose to post bail and go free, it motivates them to show up for trial. This practice has been a feature of the justice system since the country’s inception, and is even codified in the Bill of Rights: the 8th Amendment reads, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹

Yet after over two centuries of use, cash bail has begun to meet challenges. Reformers claim the practice is predatory, ineffective, and wasteful, contending that in reality, it neither increases court appearances nor protects public safety. In 2014, New Jersey came to the forefront of a growing debate when the state eliminated cash bail in its court system, drastically altering the legal landscape. This paper examines how advocates in New Jersey came to recognize cash bail as a problem, and how they framed policy change to make it palatable to voters and legislators. I argue that proponents of bail reform framed the proposed changes as a matter of both law and order and fairness in order to appeal to a broad population. Opponents used law-and-order framing as well, but it was one of multiple disconnected angles taken, and the lack of cohesion in their messaging harmed their campaign. Ultimately, proponents succeeded because of the strength of the aforementioned frames and the bipartisan nature of the pro-reform coalition, which was simultaneously a cause and a product of the frames themselves.

¹ U.S. Const. amend. VIII.

Reform in New Jersey

New Jersey enacted bail reform in two parts. First, the state legislature passed a set of laws to enable the potential new system to function properly. These included non-monetary release options for low-risk individuals, a system that utilizes risk assessments to make individualized pretrial release determinations, and the establishment of a pretrial services unit within the court system to provide appropriate levels of monitoring and counseling for those awaiting trial. Governor Chris Christie signed the legislation on August 11, 2014.

The next step was an amendment to the state constitution allowing judges to deny bail to suspects thought to pose a threat to public safety.² Prior to the passage of the amendment, state law barred judges from denying defendants bails (bail could only be denied to persons charged with capital offenses, but New Jersey had repealed the death penalty, meaning no capital offenses existed anymore).³ The amendment altered part of Article I, Paragraph 11 of the New Jersey Constitution, which initially read, “All persons shall, before conviction, be bailable by sufficient sureties, except for capital offense when the proof is evident or presumption great,” to read as follows:

All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person’s appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision.⁴

² New Solutions Campaign, Bail Reform FAQ

³ New Jersey Pretrial Detention Amendment, Public Question No. 1 (2014)

⁴ New Jersey Pretrial Detention Amendment, Public Question No. 1 (2014)

On November 4, 2014, the ballot measure to ratify this amendment passed a referendum with 62% of the vote. A Pretrial Service Program Review Commission was established through the reform legislation to oversee and assist with effective implementation, and the Criminal Justice Reform Act officially took effect on January 1, 2017.⁵

The data so far suggest bail reform may achieve its goal. Since the beginning of 2017, New Jersey's pretrial inmate population has fallen by roughly 16%, which is to say that 2,167 fewer people were being detained pretrial on July 31, 2017, than were on that date in 2016. The state's violent crime rate in 2017 thus far has been about 17% lower than the same period of 2016. This is a sharp drop compared to the change in 2016 and 2015.⁶ Causality has not been proven, and the decrease in the crime rate could be due to unrelated factors. Nevertheless, safety does not seem to have decreased even as more defendants go free.

Framing

Explaining bail reform's success in New Jersey requires an understanding of framing and how it operated in both advocates' and opponents' campaigns. The field of framing is founded on the assumption that the way a certain concept is presented can have profound effects on people's opinions of it. Research shows that high-quality opinions – those “defined as being stable, consistent, informed, and connected to abstract principles and values”⁷ – are rare. Indeed, studies have found that phrasing or presenting the same issue differently can significantly alter participants' opinion.⁸ For example, polling data shows that some voters are much more supportive of the Affordable Care Act than of Obamacare (even though in reality these are the

⁵ Race & Bail in New Jersey

⁶ Matthews 2017

⁷ Chong and Druckman 2007

⁸ Chong and Druckman 2007

same). As a result, people are susceptible to framing, “the process by which people develop a particular conceptualization of an issue or reorient their thinking about [it].”⁹ Frames give meaning to events and occurrences and can be used to organize collective action; they can change the weight individuals give to various considerations, or alter people’s overall opinions. Strong frames “often rest on symbols, endorsements, and links to partisanship and ideology, and may be effective in shaping opinions through heuristics rather than direct information about the substance of a policy.”¹⁰

The efficacy of a frame depends on its strength and repetition, the competitive environment (i.e. are there other contradictory frames within the debate?), and individual motivations. In addition, frames endorsed by credible sources “are more likely to shift opinions, as are frames that invoke longstanding cultural values.”¹¹ Individual predispositions are the clearest limit to framing effects: people with rigid principles are less amenable to frames that contradict their values. When presented with different frames of an issue, people generally adopt the alternative that confirms their viewpoint. Given that politics is characterized by constantly competing narratives, this phenomenon is quite common. The formation of public opinion inevitably entails “the selective acceptance and rejection of competing frames that contain information about candidates and issues.”¹² This is not to say that frames are powerless against personal dogma, however: despite the rigidity of some people’s opinions, “each side [in a framing conflict] has the potential to draw voters away from its opponents using frames for its own position that may also appeal to the other side’s voters.”¹³

⁹ Chong and Druckman 2007

¹⁰ Chong and Druckman 2007

¹¹ Chong and Druckman 2007

¹² Chong and Druckman 2007

¹³ Chong and Druckman 2007

In practice, frames often face both internal and external challenges. For instance, sometimes experiential commensurability is low: a movement's target audience is very different from the movement's beneficiaries, and their primary interests are not obviously linked. This was certainly true of the campaign for bail reform in New Jersey, where many voters and legislators had little in common with the defendants the proposed reform would aid. In such cases, frame amplification – “the idealization, embellishment, clarification, or invigoration of existing values or beliefs,” such as the belief in equity or the value of law and order – is particularly important.¹⁴ Frames are also often subject to counter-framing by movement opponents and the media, both of which may harm the original frame's message. Reform efforts in New Jersey faced this kind of challenge as well, primarily from members of the bail-bond industry. When strong, however, frames enable individuals to overcome collective action problems by developing a shared understanding, mutual goals, and a consensus on the best course of action.

Methodology

To elucidate what frames were used in the bail reform debate and why some were more effective than others, I interviewed four stakeholders in New Jersey's debate over bail reform: Alexander Shalom, the Senior Staff Attorney at the New Jersey Branch of the American Civil Liberties Union; Jeff Clayton, the Executive Director of the American Bail Coalition; Elie Honig, the Director of the New Jersey Division of Criminal Justice; and Alexandra Staropoli, the Policy Manager of the New Jersey Drug Policy Alliance (a nonprofit that works to end the “War on Drugs”). During the interviews, each of which lasted approximately 30 minutes, I asked the

¹⁴ Benford and Snow 2000

interviewees 12 standard questions in order to best gauge the similarities and differences in their perspectives.

I originally hoped to speak to three advocates and three opposition members in order to get a balanced understanding of the bail reform debate. Recognizing that my desired interviewees are elites and are thereby less likely to respond to inquiries, I contacted six stakeholders in addition to the four mentioned previously. These included Representative Donald Norcross and Senator Jennifer Beck, the members of the state's Congress who sponsored the reform legislation and the ballot question on the constitutional amendment; Governor Christie, who endorsed bail reform; the administrator of a Facebook page called "NJ Bail Reform – Why New Jersey is LESS SAFE at the Taxpayers [sic] Expense," which has over 14,000 likes and receives almost daily posts documenting the accused crimes of those released pretrial; Charles Steele Jr., President of the Southern Christian Leadership Conference, who spoke out against the reform; and Beth Chapman, President of the Professional Bail Agents of the United States, another reform opponent. Recruiting proved more difficult than I anticipated, however, and I was ultimately able to speak with only the four mentioned earlier.

In order to substantiate the data collected through interviews, I examined primary source materials. These included news coverage of the debate and its outcome, both televised and in print; opinion articles written both for and against bail reform; testimony provided on behalf of the bill; literature including the "Report of the Joint Committee on Criminal Justice" and a document entitled "Bail Reform FAQ," which was distributed by the New Solutions Campaign (a subsidiary of the DPA created to address New Jersey's "out-of-control" prison growth); statements made by Nicholas Wachinski (the Executive Director of the American Bail

Coalition during the debate), Steele, Chapman, and Christie; and opinion pages and websites decrying bail reform, namely the “NJ Bail Reform” Facebook page and BailReformNJ.com.

The largest flaw in my methodology is that it does not reach the population ultimately necessary to determine which frame was most persuasive to the voters and the congressmen: the voters and congressmen themselves. The stakeholders I spoke to and the primary source materials I consulted gave me a solid understanding of the frames each side used. Given that both proponents and opponents of bail reform cast the issue in multiple lights, however, it was difficult to isolate the effects of any individual frame. The limited funds available to me and the short timespan of my project prevented me from collecting and compensating random samples of New Jersey voters and congressmen in order to survey them about which of the frames used by either campaign were most convincing to them. Nevertheless, the stakeholders I interviewed each had opinions about which frame was most effective, and I combined this information with the data gleaned from primary sources to draw conclusions about the role of each frame in the overall debate.

Findings

Impetus for Change

The match that sparked reform of New Jersey’s pretrial practices came in 2013, when the Drug Policy Alliance commissioned a study to examine the nature of incarceration within the state. The DPA’s study found that county jails in New Jersey were full of low-risk individuals awaiting trial, “many of whom [were] incarcerated simply because they [could not] afford often

nominal amounts of bail.”¹⁵ According to the study, nearly 75% of inmates in New Jersey’s jails were awaiting trial rather than serving a sentence, and 39% were eligible to be released on bail. Many, however, could not meet amounts as low as \$2,500, or a \$250 payment to a bail-bondsman.¹⁶ These inmates were held for an average of ten months before they were tried, and their imprisonment during that time cost the state millions of dollars annually.¹⁷

The DPA report acted “as a catalyst,”¹⁸ prompting Chief Justice Stuart Rabner of the New Jersey Supreme Court to create the Joint Committee on Criminal Justice. Composed of about 20 people from all parts of the justice system – “the who’s who of the criminal justice landscape of New Jersey”¹⁹ – the group was tasked with adjusting money bail to make it more just without passing constitutional amendments or legislation. According to Shalom, however, members quickly concluded that “the only way to make [the system] fair was to fundamentally alter it, from a resource-based system to a risk-based system.”²⁰ The group voted unanimously that “there was no way to tinker with the system,”²¹ and instead turned their attention to creating the framework for a system without cash bail. The “Report of the Joint Committee on Criminal Justice,” published on March 10, 2014, provided “the structure and the skeleton” of what would soon become bail reform.²²

Following the release of the committee’s report, the campaign to eliminate cash bail began attracting high-level support from state officials across the political spectrum, including

¹⁵ DPA Study

¹⁶ DPA Study

¹⁷ New Solutions Campaign, Bail Reform FAQ

¹⁸ Alexander Shalom, Telephone Interview by Author, 6 December 2017

¹⁹ Shalom Interview

²⁰ Shalom Interview

²¹ Shalom Interview

²² Elie Honig, Telephone Interview by Author, 7 December 2017

Christie, the Attorney General, and the Senate President. The State Commission of Investigations issued its own report citing the DPA's study and calling for comprehensive bail reform. New Solutions supported the proposed changes, claiming that they would "create a fairer, safer, and more cost-effective bail system."²³

Framing by Proponents

Once the campaign to eliminate cash bail had been set in motion, advocates used two main frames to sell bail reform to legislators and the public: fairness and law and order. Those two arguments, according to Honig, "were the foundation of what this consensus was built on."²⁴

The fairness frame emphasized the inequity of detaining individuals essentially for being poor, and appealed to values generally associated with liberal voters and legislators. During the ratification process, Shalom gave testimony in support of the legislation in which he utilized this messaging, saying, "A vast number of indigent defendants continue to be subject to pretrial detention and plead guilty solely because of their poverty.... We must guarantee that the outcome of no defendant's criminal case is determined simply by his ability to pay."²⁵

To support the fairness narrative, reform advocates disseminated the stories of individuals "whose lives were destroyed by being incarcerated."²⁶ One such individual was Mustafa Willis, who was charged with the possession of a stolen gun in 2010. Bail was set at \$50,000, meaning that Willis would have had to come up with a \$5,000 payment to a bondsman in order to go free. Unable to afford this amount, Willis spent three months in jail, during which time he lost his job, missed his cousin's funeral, and developed high blood pressure from the stress of incarceration.

²³ DPA, *Winning Bail Reform in New Jersey*

²⁴ Honig Interview

²⁵ Alexander Shalom Testimony

²⁶ Alexandra Staropoli, Telephone Interview by Author, 17 November 2017

Eventually the judge on Willis's case reduced bail somewhat, and Willis was able to secure a bond. Shortly after he went free, prosecutors dropped all charges against him.²⁷ According to advocates, Willis's experience was by no means unique, and an example of the inequity inherent in any system reliant on cash bail.²⁸ "The essence of the story was to give life to that which was revealed in the [DPA's] jail population analysis," said Shalom. "Being in jail has untold human consequences: loss of job, loss of housing, loss of family relationships. Show people harmed by the money bail system. Show the human face behind the numbers"²⁹

Clayton called this framing "tugging at heartstrings." Reform advocates "cherry picked cases where someone seems innocent-sounding and they couldn't afford bail and then they were later exonerated," he said. "They don't tell you criminal histories, or all the other things judges are considering when they assign bail."³⁰ Staropoli saw things differently. Describing bail reform's eventual success, she claimed that "the population understood the inherent injustice in a system where freedom depends on the amount of money you have."³¹

While persuasive in its own right, the fairness frame "wouldn't have been as powerful without the stories from the other end, people being released and committing crimes while on bail."³² These stories were framed as matters of law and order, and they were targeted mainly towards conservative legislators and voters. Shalom engaged with the law-and-order frame on behalf of the ACLU, saying "Under the old system, every single defender got money bail. Even if you were high risk, if you could post the money, you could get out."³³ Honig discussed his use

²⁷ PBS News Hour

²⁸ Staropoli Interview

²⁹ Shalom Interview

³⁰ Jeff Clayton, Telephone Interview by Author, 28 November 2017

³¹ Staropoli Interview

³² Staropoli Interview

³³ Honig Interview

of this frame as well, calling it the “public protection angle – lock them up [so] they can’t get out.”³⁴

“The rich gangster example,”³⁵ as Clayton termed it, was held up by liberal and conservative voices alike as further proof that bail reform was necessary. Just as with the fairness frame, advocates emphasized certain cases as examples of the dangers inherent in a system where detention is conditional on cash. One of these cases was that of the Short Hills Mall Murder,³⁶ in which four men, some of whom were out on bail, stole a car from a mall parking lot and fatally shot a man in the process.³⁷ Calling attention to this and other instances where crimes were committed by those who had made bail, proponents of reform claimed that a system where money is the prerequisite for freedom could not maximize public safety the way one focused on risk could.

Clayton recognized the efficacy of advocates’ use of “the dangerous cases.” “It was sold as a tough on crime policy,” he said, “and I think people bought into that.”³⁸ By arguing that cash bail actually made communities less safe by freeing defendants based on means rather than risk level, activists were able to tap into and redirect the fear that has long buoyed incarceration.

Framing by Opposition

While those opposed to bail reform were no less vocal than reformers, their campaign lacked the concerted framing that made advocates so successful. Instead, different figures focused on different messages without drawing connections between them, ultimately

³⁴ Honig Interview

³⁵ Clayton Interview

³⁶ Staropoli Interview

³⁷ Wichert 2014

³⁸ Clayton Interview

undermining their larger cause. The bail industry was the most prominent challenger to reform, followed by Steele. Even representatives of that lobby, however, were not united on which frames should be the focus of their pushback.

Some opponents focused on what Staropoli called “scare tactics,” or the “dramatization that [defendants] will be released into the community and wreak havoc”³⁹ – in other words, their own spin on the law-and-order frame. Beth Chapman, President of the Professional Bail Agents of the United States, was among those to play up public safety in criticisms of the proposed reform.⁴⁰ Chapman repudiated the equity frame used by reformers, saying, “People are not in jail because they’re poor – they’re in jail because they broke the law.”⁴¹ She also referenced law and order explicitly in a newsletter to her organization, writing, “We must stand united and strong, willing to fight back and wage war against the special interests who would destroy law and order in this country to advance their radical agenda.”⁴²

Other opponents forewent law and order, choosing instead to emphasize the presumed costliness of the proposed reforms, or to claim that the reform would actually increase discrimination against poor defendants. On October 31, 2014, the American Bail Coalition released the following statement urging a no-vote on the upcoming referendum:

This new system will require substantial fiscal and logistical investment, in excess of two hundred million dollars that New Jerseyans can ill afford...[it] has been criticized by many, including Attorney General Eric Holder, as being potentially biased against race minorities and persons with limited financial means.⁴³

³⁹ Staropoli Interview

⁴⁰ Zambito 2014

⁴¹ Feuer 2017

⁴² Feuer 2017

⁴³ NJTV News 2014

The ABC particularly stressed bail reform's supposedly exorbitant price tag. "In New Jersey, the estimate [for the cost of operations] was \$500 billion annually," said Clayton. "If they don't alter how it's being funded, they're out of money June 1....The buildout of it all is going to be a problem."⁴⁴

Although the previous statement mentions discrimination, Steele was the main voice charging that bail reform would prove biased, calling the relevant legislation a "conspiracy against the poor" and "racist." He argued that its passage would give pretrial services officers the power to recommend sending defendants back to jail for not paying fines, and that the algorithm to be used in risk assessment would penalize defendants for mistakes made in the past by considering their criminal histories.⁴⁵ Without a further explanation of how exactly reform would harm poor and minority defendants, however, this counter-frame proved unsuccessful at undermining proponents' fairness frame. "They were making the argument that it would be bad for communities of color...[but] it was a little unclear what argument he was making," said Staropoli. "Was he testifying in support of or against the reform?"⁴⁶ She added that a strong faith leader coalition was also critical to countering this rhetoric.⁴⁷

Without a consistent set of frames, opponents of bail reform had difficulty making a strong case against the proposed changes (rather than appearing to talk over one another). Their campaign suffered from this absence of a cohesive message, and the appearance that bondsmen were acting in their own self-interest further impaired their argument. "The main opponent was

⁴⁴ Clayton Interview

⁴⁵ Zambito 2014

⁴⁶ Staropoli Interview

⁴⁷ Staropoli Interview

[the] bail-bond [industry], and it's obvious why they opposed it," said Honig. "They've essentially gone out of business."⁴⁸

Frames' Relative Significances and the Importance of Bipartisanship

The stakeholders interviewed each believed that the fairness frame was more important than the law-and-order message to bail reform's eventual success. "The fairness is what drove it," said Honig "The thing that captured the public consciousness was the notion of the nonviolent, low-risk offender [who is] locked up on \$200 bail but is too poor to post it." While he believed that the law-and-order frame worked in advocates' favor, it was ultimately not as important "because in the old system, really dangerous offenders were just given massive bail"⁴⁹ to keep them behind bars. "Who can argue with 'let's assess people on risk, not money'?" he said. "It was too much of a moral imperative. It was too hard to oppose."⁵⁰

Shalom also thought fairness mattered more than law and order because of its "ability to quickly neutralize the arguments of folks who would have said, 'We have no problem here.' Being able to say back, 'No one thinks a rational system keeps people in jail because they can't afford \$25 – that's a preposterous system.'"⁵¹ Staropoli said that the DPA focused on "justice,"⁵² and Clayton too believed that "the 'poor defendant' argument" was more effective than "the 'lock up the rich guy' argument."⁵³

Nevertheless, the interviewees were all in agreement that the legislative side of bail reform could not have been accomplished without the constitutional amendment, and vice versa

⁴⁸ Honig Interview

⁴⁹ Honig Interview

⁵⁰ Honig Interview

⁵¹ Shalom Interview

⁵² Staropoli Interview

⁵³ Clayton Interview

– and law-and-order framing was the primary cause of the amendment’s success. The ballot question was “written in a slanted way”⁵⁴ in order to “appeal to people who wanted to cure the old system and people who wanted to see more people detained.”⁵⁵ The question read as follows:

Do you approve amending the Constitution to allow a court to order pretrial detention of a person in a criminal case? This would change the current constitutional right to bail. The change would mean that a court could order that a person remain in jail prior to trial, even without a chance for the person to post bail, in some situations....The Constitution currently requires a court to grant bail to a jailed person in a criminal case before trial. If the person posts bail, the person is released from jail pending trial. The amendment would give a court the option of ordering a person to remain in jail in some situations. *The court could order such a detention based upon concerns that the person, if released: will not return to court; is a threat to the safety of another person or the community; or will obstruct or attempt to obstruct the criminal justice process.*⁵⁶ [italics mine]

Shalom claimed that “this is undeniably a law-and-order message.” What’s more, “it’s a hard question to say no to. Even people who don’t want preventative detention know there needs to be some way to keep the most dangerous people in jail.”⁵⁷

All the four stakeholders expressed the contingency of the amendment on the legislation, and vice versa. While the ACLU has historically been reluctant to endorse preventative detention – in the 1980s, the organization called the practice “fitting a system of tyrants” – Shalom plainly stated that the legislation would not have passed had it not been for the promise of the constitutional amendment. “We could not have accomplished one without the other,” he said.⁵⁸ Staropoli claimed that the coupling of preventative detention with bail reform legislation “allowed the public safety folks who are more conservative to get on board [and] gave them a

⁵⁴ Honig Interview

⁵⁵ Shalom Interview

⁵⁶ New Jersey Pretrial Detention Amendment, Public Question No. 1 (2014)

⁵⁷ Shalom Interview

⁵⁸ Shalom Interview

sense that they were getting something from it. I don't think you would have had prosecutors and defense attorneys in agreement without that.”⁵⁹ Clayton expressed a similar sentiment, saying, “If either component is missing, this doesn't happen.” His opinion was that bail reform succeeded because both “people on the right and left assumed it would be a good deal.”⁶⁰

Beyond the bargaining between different sides, there were practical reasons that the amendment and the legislative piece went hand in hand. “The legislation itself says it is contingent on the passage of the amendment,” Honig said. “The state constitution said every defendant had the right to bail. We had to change that aspect of the constitution, because [under the new system,] the highest risk defendants do not get bail. [Had the amendment not passed,] it would have eliminated the compromise that had been struck.”⁶¹ As Shalom put it, “The beauty of it was you can't have one without the other.”⁶²

The same could be said of the bipartisan cooperation responsible for bail reform's victory. “The thing that can't be understated is the willingness of strange bedfellows to make some concessions,” said Shalom, who lauded liberals' and conservatives' readiness to adopt the other side's messaging.⁶³ “Christie talked about the old system as the equivalent of a debtor's prison, which sounds like ACLU rhetoric,” he said, “and we adopted the ‘need to protect public safety’ line.”⁶⁴ Indeed, during his testimony on behalf of ACLU-NJ, Shalom appealed to law-and-order by emphasizing that “a limited, select group of defendants” should be eligible for detention without bail so as to protect public safety and ensure the defendants' presence at court

⁵⁹ Staropoli Interview

⁶⁰ Clayton Interview

⁶¹ Honig Interview

⁶² Shalom Interview

⁶³ Shalom Interview

⁶⁴ Shalom Interview

hearings.⁶⁵ Staropoli shared Shalom's sentiment, saying "I think it passed because...all of those players were saying the same thing. 'It's not fair, we're ripping apart families by detaining people who are poor' and at the same time, 'we're not maintaining public safety.'"⁶⁶

Discussion

Bail reform is "not one size fits all,"⁶⁷ and certain distinctive conditions in New Jersey made the state "uniquely suited" to the successful elimination of cash bail.⁶⁸ In particular, the hierarchical nature of the criminal justice system and the judicial branch allowed reform to be drafted and executed in a coordinated, top-down manner. Specifically, the New Jersey Attorney General has direct supervision of all prosecutors and police, meaning "if they say, 'this is how we're going to do it,' everyone must comply."⁶⁹ In states such as New York, in contrast, "the District Attorney can just stick their head in the sand."⁷⁰ The same is true of New Jersey's judiciary: the Chief Justice of the State Supreme Court makes policy decisions for the whole judicial branch, and every defendant who appears for a first appearance is represented by the office of the public defender, whether or not they are indigent. This structure permits decisions to be made by leading officials and implemented throughout the justice system, whereas in the case of states without a statewide public defender, "you have to create a system for people that

⁶⁵ Alexander Shalom Testimony

⁶⁶ Staropoli Interview

⁶⁷ Honig Interview

⁶⁸ Shalom Interview

⁶⁹ Shalom Interview

⁷⁰ Honig Interview

provides representation” before reform can even be considered.⁷¹ According to Honig, “Structural integration [made] us more capable of doing this on a coordinated scale.”

New Jersey also had the technological framework in place that made risk assessment a practical alternative to a resource-based system. While New Jersey uses a computer system to run risk assessments – a process taking only a few minutes and not requiring an interview with the defendant – certain states run risk assessments with pen and paper. Had this been the case in New Jersey, it would have increased the cost of reform and posed a sizable obstacle to large-scale implementation. Luckily for advocates, “we didn’t have to start at the bottom,” said Shalom.

Finally, politics played a role in bail reform’s success in New Jersey for three primary reasons. First, New Jersey is a solidly “blue” state. Though pockets tend to vote conservatively, Democrats have won New Jersey by a fair margin (between 7% and 18%) in all of the last seven presidential elections.⁷² Second, Christie had been advocating for a preventative detention bill for a number of years before bail reform was on the agenda, and thus was interested in reform advocates’ package, which would enable him to get it passed.⁷³ Third, Clayton suggested that Christie’s aspirations to the presidency in 2016 made him more amenable to bipartisanship than he might otherwise have been. “The ‘helping the poor’ argument was the key that unlocked the door,” he said. “Christie wanted to be hard on crime and progressive at the same time.”⁷⁴ Given the importance of bipartisan cooperation to the reform’s passage, one can imagine how much

⁷¹ Shalom Interview

⁷² 270 to Win

⁷³ Staropoli Interview

⁷⁴ Clayton Interview

more difficult the process would have been had a Republican governor not championed the cause.

These structural factors aside, the case of bail reform illustrates that criminal justice agendas have the potential to succeed with bipartisan support, but that securing it may require dressing progressive legislation in conservative clothes. One question not addressed in this paper is whether liberal advocates are comfortable with this kind of framing. Of all the stakeholders interviewed, Staropoli expressed the greatest reservation with the law-and-order frame and the preventative detention amendment, calling it “a hard concept to wrap our heads around.”⁷⁵ “I wish the preventative detention side wasn’t necessary,” she said, “but when they aren’t coupled together, [reform is] so much harder to achieve.”⁷⁶ Although she was the only one of the four stakeholders to voice these concerns, it seems plausible that other liberals within the debate shared the same sentiment.

Another question raised by the case of New Jersey pertains to more than just cash bail. Namely, might certain frames advance one piece of legislation while undermining a larger cause? The essence of the law-and-order frame is that bail reform will ensure that dangerous, violent criminals stay behind bars. Another movement under the larger criminal justice reform umbrella, however, focuses on the rights of violent offenders, and the law-and-order framing of cash bail undeniably does a disservice to this cause to some degree. Whether advocates should keep an eye towards possible future reform efforts or concentrate on winning the victories they can in whatever way necessary is a matter for further debate.

⁷⁵ Staropoli Interview

⁷⁶ Staropoli Interview

Conclusion

This paper sought to explicate how reform advocates came to see one of the American criminal justice system's oldest practices – cash bail – as a serious problem requiring redress, and how framing allowed them to rally support for their agenda. Before I began my research, I hypothesized that advocates were initially motivated to push for bail reform in New Jersey by the DPA's study revealing the costs of mass incarceration. Once committed to changing the system, I predicted, advocates were able to convince legislators and voters to support the elimination of cash bail by reclaiming the law-and-order frame that has typically been used to bolster strict policing. This hypothesis was born out in part. I did not, however, initially recognize the power of the Joint Committee's report in galvanizing support, the importance of the fairness frame and the bipartisan cooperation, or the disjointed nature of opponents' framing that ultimately handed advocates their victory. Staropoli called the confluence of all these factors "the perfect storm," saying, "everything came together to catapult the reform into success."⁷⁷ New Jersey demonstrates the possibilities for large-scale criminal justice reform, at the state level and perhaps at the federal level as well, when coalitions are broad and framing is creative.

⁷⁷ Staropoli Interview

Appendix

Interview Subjects

Alexander Shalom – Senior Staff Attorney at the New Jersey branch of the American Civil Liberties Union

Jeff Clayton – Executive Director of the American Bail Coalition

Elie Honig – Director of the New Jersey Division of Criminal Justice

Alexandra Staropoli – Policy Manager of the New Jersey Drug Policy Alliance

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BAR BULLETIN



This is a reprint from the King County Bar Association Bar Bulletin
December 2017

No-Money Bail Movement Fails To Deliver on Promises

By Jeffrey J. Clayton

As we have watched the no-money bail movement continue to sling false narratives, the undeniable truth has emerged that the actual no-money bail system is too expensive. The price tag is too high for state and local governments, while the defendants we are supposedly trying to protect are finding the costs equally excessive in terms of their rights, which they are being asked to surrender.

While it is often posited that we need to move more toward the current federal bail system, we should keep in mind that only a generation ago Justice Thurgood Marshall would have held the federal system unconstitutional at the urging of the ACLU. He accurately forecast it would be a system that would “go forth without authority and come back without respect.”

Regarding false narratives, we often hear that jails are places where the poor are simply warehoused, while being coerced to plead to charges for which they are not guilty. The national talking point declares as fact that 70 percent of persons in jail are languishing because they cannot afford their bail.

Yet, the Pretrial Justice Institute — the main national group pushing the no-money bail system — recently debunked its own key issue in a report noting that the rate of pretrial incarceration is less than 20 percent in 43 states. Indeed, Washington is among 13 states that have a pretrial incarceration rate of less than 10 percent.

In addition, when one looks closely at the makeup of King County’s correctional system, a very different picture of who is actually in jail emerges. Accord-

ing to the 2016 King County Detention and Alternatives Report, only 11 percent of the jail population was there on low-level misdemeanors that would, in theory, make them eligible to be evaluated by the risk assessment tool favored by bail reform advocates.

The analysis should not stop there. Of this 11 percent, many have local and federal hold restrictions and in-custody programs that would prohibit pretrial release anyway. Perhaps most significant is the fact that 94 percent of the inmates in King County jail facilities are under secure confinement. Such an inmate is, by definition, not a first-time, low-level offender who is there simply because he or she cannot post bail.

Defining the actual scope of the problem is important in constructing the appropriate solution. If it can be clearly shown that use of a risk assessment tool can actually help address the reportedly 6 percent of the population in King County jails who might utilize it, it might make sense. As it stands, the county does a remarkable job on pretrial release, with an incarceration rate only 40 percent of the national average and a median length of stay for all bookings of just one day. Further, 55 percent of all bookings in King County turn over in three days and there must be a probable cause hearing in Washington within 48 hours of arrest.

Taxpayers should not be burdened with funding the overhaul of a system that works phenomenally well for 94 percent of the jail population in King County, just to fix a problem that may exist for only 6 percent. A size-appropriate solution should be found.

Another mistruth being perpetuated as fact is that bail is unconstitutional if someone cannot afford it, pursuant to the equal protection clause. That very question is currently being decided by the U.S. Courts of Appeal for the Fifth and Eleventh Circuits.

The U.S. Department of Justice, under the Obama administration, launched what The Wall Street Journal termed a “guerrilla war against small cities in the south” for their bail policies. The DOJ had something of a point when it cited the unfairness of cases where a person for whom bail was set by a schedule was forced to wait up to two weeks prior to going before a judge for their bail review. Because of that and since the ruling in *Varden v. City of Clanton*, a gold standard has been set, with the requirement that all bails set by a schedule must be reviewed by a judge within 48 hours.

In October, the Justice Department under Attorney General Jeff Sessions, along with nine state attorneys general, came to a consensus that there is no right to affordable bail. Instead, there is a right to a bail that is not excessive, as judged by the facts of each case. Also, any bail set by a schedule must be promptly reviewed no later than 48 hours after it is set. Therefore, despite all of the rhetoric, the issue was ultimately defined as one of adequate due process, rather than the forced redefinition of the Eighth Amendment and states’ constitutional right to bail.

A key component of the no-money bail movement is the advocacy to change state constitutions so that authorities have the discretion to detain those whom they label as dangerous via the use of

computer algorithms. It follows that an unposted bail would not operate to keep someone in jail if there are no monetary conditions of bail at all.

It might surprise some that only a generation ago the ACLU opposed the Federal Bail Reform Act of 1984. It did not feel that preventative detention was constitutional, nor was there a general belief that computers could ever be used to scientifically predict who was dangerous.

Of course, Justice Marshall vigorously dissented in *U.S. v. Salerno* on this very question:

Throughout the world today there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word, because their governments believe them to be “dangerous.” Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of such unchecked power. Over 200 years it has slowly, through our efforts, grown more durable, more expansive, and more just. But it cannot protect us if we lack the courage, and the self-restraint, to protect ourselves.

Today, the no-money bail movement and various local chapters of the ACLU have forgotten history and are now demanding that government be given carte blanche to label people as dangerous, while entirely eviscerating the right to bail in our country.

While then-Chief Justice William Rehnquist, through the Federal Bail Reform Act of 1984, made it legal for state systems to abuse their authority, he did not have the power to make it a good idea. And of course, the federal system, as Justice Marshall predicted, has undeniably come back without respect since the rate of pretrial incarceration has increased by 167 percent since the passage of the act.

In New Jersey and New Mexico, the use of preventative detention has proven to be a disaster. As their laws are currently written, the only mechanism by which a defendant remains in jail pend-

ing trial is by proving through clear and convincing evidence that he or she is a danger to the community or a flight risk. Requiring this of a prosecutor is too expensive and impractical. It means having to put on a mini-trial before the actual case is heard and sets too high of a bar to be used as general crime control policy.

On the other hand, requiring the posting of security is flexible and judges can adjust bails under long-standing Eighth Amendment and state case laws as to what qualifies as excessive bail. In states where it is in use, the strike rate of preventative detention is lower than 50 percent.

A huge problem arises in states where there is no ability for a judge to impose a financial condition of bail. In situations where a prosecutor believes a defendant is too dangerous to be released — but is unable to prove it by clear and convincing evidence — the person is then released on a simple promise to appear. As it currently stands, there is simply no other legal alternative to this dilemma.

The alleged savings in these no-money bail systems is also proving to be a myth. Due largely to a complete shift in policy as to the handling of drug offenses, jail populations in New Jersey have been dropping for half a decade. Despite this, the state’s Acting Administrative Director of the Courts Glenn Grant testified in May that absent a major infusion of dollars, the no-money bail system would run out of financing by the end of 2019. For this reason, the association of counties sued New Jersey alleging an unfunded mandate. In addition, various bar associations also sued over the fee increases to support bail reform.

Meanwhile, in California, Chief Justice Tani Cantil-Sakauye recommended the no-money bail system, but then clearly acknowledged that we cannot rely on savings to pay the bill. Of course, this is exactly what state legislative analysis has been indicating all along — it’s probably a \$1-billion annual proposition to implement.

As we look back on the chronology of the no-money bail systems implement-

ed this year, the lesson to be learned is that we can make adjustments at the top end of the system and at the bottom end, while leaving intact much of what goes on in the middle.

Yes, a case can be made that certain crimes should be deemed eligible for preventative detention and that a limited number of defendants should have to face this as a result. One might also argue that the current wait time for bail reviews is too long. The indigent, among others, may be forced to deal with an excessive bail for an undue length of time.

We might also look at other options. In instances where we would normally turn around and release the same person on a simple promise to appear, we might issue a citation and summons instead.

As the no-money bail movement finally reaches its crescendo, what we have really learned is that we can recalibrate the bail system simply and efficiently without bankrupting taxpayers and simultaneously harming the civil liberties of every citizen. At the end of the day, judges need the best information they can get to make educated decisions and we have to trust them to get it right. ■

Jeff Clayton is the executive director of the American Bail Coalition. Clayton joined the American Bail Coalition as policy director in May 2015. He has worked in various capacities as a public policy and government relations professional for 15 years, and also as a licensed attorney for the past 14 years. Most recently, he worked as the general counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative and policy matters. Clayton spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior presidential management fellow and finalist for the U.S. Supreme Court fellows program. Clayton holds a B.B.A. from Baylor University, an M.S. (Public Policy) from the University of Rochester, and a J.D. from the Sturm College of Law, University of Denver.



Bail agents oppose proposed changes to Ohio's bail system

By BRANDON KLEIN - The Daily Reporter | Friday, December 22, 2017 |

The Ohio Bail Agents Association is trying to prevent proposed legislation from reforming the state's bail system.

"Our livelihood is on the line, ladies and gentleman, but we believe with our hard efforts our industry will prevail and continue to serve our fellow communities," the association stated on the front page of its website.

The U.S. Bureau of Labor Statistics classifies bail bond agents as a type of financial specialist.

The agency reported Ohio employs about 5,360 financial specialists with an annual average salary \$74,910 as of May 2016. In Columbus, the field employs about 1,310 workers in Columbus with annual median hourly wage of \$34.29 and average annual wage \$73,030.

State Reps. Jonathan Dever, R-Madeira, and Tim Ginter, R-Salem, introduced House Bill 439 earlier this month to establish a bail system partly based on "validated risk assessment tools" that would take into account a person's threat to society and the risk that a person will fail to appear in court. It would also allow courts to set non-monetary bail and would require courts to collect certain data on bail, pretrial release and sentencing.

"Bail reform is about putting the focus back on releasing individuals who do not pose an immediate danger to society, not just those with financial means," Dever stated. "These are decisions that should be based on evidence and not the size of one's pocketbook."

But Charles Eddie Miller, president of the OBAA, said issues with the proposed reforms include a lack of transparency with the risk assessments' algorithms, independently verifying a person's criminal history and what would be taken into account. He said the current system brings accountability and ensures most people charged appear in court. He added that some adjustments could be made to the current system.

While the bill will be referred to the committee for further consideration, the conservative think tank, the Buckeye Institute released a report last week endorsing bail reform with the implementation of risk assessment tools.

"The traditional money bail scheme is in dire need of reform, it is an inefficient, expensive, unfair means of protecting communities that has proven no guarantee to stopping repeat offenders," stated Daniel J. Dew, a legal fellow with The Buckeye Institute's Legal Center and author of the report.

"The bail system in Ohio is essentially the same one being run since statehood," stated Jeff Clayton, executive director of American Bail Coalition, who disagreed with the Buckeye Institute's report. "While adjustments to the system can always be made, putting our blind faith in 'black-box' algorithms to fix the problem is not only unproven, it is simply naïve."

THE WALL STREET JOURNAL.

Manhattan District Attorney Won't Seek Bail for Most Misdemeanors

Move follows similar policy implemented last year by Brooklyn district attorney's office



A bail bonds business is shown near Brooklyn's courthouse complex and jail in New York. PHOTO: KATHY WILLENS/ASSOCIATED PRESS

By [Corinne Ramey](#)

Updated Jan. 9, 2018 2:33 p.m. ET

The Manhattan district attorney's office said Tuesday it would no longer ask that judges set bail for people accused of most misdemeanors.

The Brooklyn district attorney's office implemented a similar policy in April of last year. The changes come at a time when jurisdictions across the country are reducing or questioning their use of bail, which critics say allows wealthier defendants to pay their way out of jail while keeping poorer ones behind bars. Proponents of bail say it functions as a deposit to ensure defendants show up to court.

"When non-violent New Yorkers are jailed as a function of their inability to pay, we perpetuate inequality and mass incarceration, and bring about unnecessary immigration, employment and family consequences," Manhattan District Attorney Cyrus Vance Jr. said in a statement.

RELATED

- [Many N.J. Bail Bondsmen Are Feeling the Squeeze](#)
- [NYC Defends Progress in Closing Rikers Jail Complex](#)
- [De Blasio Starts Search for Alternatives to Rikers](#)

Manhattan prosecutors will continue to ask for bail in some cases, such as those involving domestic violence or the injury of a police officer. They also may ask for bail in cases where a defendant has previously been convicted of a violent felony or sex crime or is on parole, the district attorney's office said.

The office estimates it will request bail in about 1,700 fewer cases this year because of the policy.

In New York City, many misdemeanors don't have bail set anyway. In 2016, judges set bail in 17.9% of some 106,000 misdemeanor cases citywide, according to a report by the Independent Commission on New York City Criminal Justice and Incarceration Reform, the panel that recommended [shuttering the Rikers Island jail complex](#) last year.

Even if the number of cases affected is relatively small, the new policy is worth applauding, said Insha Rahman, a project director at the Vera Institute of Justice, a criminal-justice organization. "It's a big deal in terms of transparency and accountability to put things in writing and therefore be held accountable for what your policies are," Ms. Rahman said.

Tina Luongo, attorney-in-charge of the criminal defense practice at the Legal Aid Society, said the public-defender group welcomed the new policy but statewide changes to the bail system are needed.

For the national bail industry, the new policy isn't a major threat, said Jeff Clayton, executive director of the American Bail Coalition, a trade group. "This order affirms that bail is appropriate in violent misdemeanors and felony cases," Mr. Clayton said.

But local bail bondsmen disagreed. At Bail Bonds NY, located near the Manhattan courthouses, about 40% of the business comes from misdemeanor cases, said employee Daishawn Decruz. "Basically they're just going to take away bonds like they did in Jersey," he said, referring to New Jersey's [near elimination of bail last year](#). "So we're not going to have any more business."

Write to Corinne Ramey at Corinne.Ramey@wsj.com



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BRANDON KLEIN, Daily Reporter Staff Writer

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Daily Journal

Data due process and no-money bail systems

By Jeffrey J. Clayton

While the topic of bail reform is not new, the debate is rapidly changing. There is continued movement across the country to implement no-money bail systems. This year, at least a dozen legislatures will consider bail reformers' claims that risk assessment computers can figure out who is dangerous and stays in jail, versus who is safe and set free.

A year ago, it seemed the deployment of computerized risk instruments would completely remake the criminal justice process. In just the past six months, however, scholars have begun to question the fairness and transparency of the algorithms used by these instruments. Concern is growing over their potential to perpetuate racial bias, rather than reduce it.

Researchers at New York University's AI Now Institute recommend that criminal justice agencies no longer use "black-box" and "proprietary algorithms" due to serious concerns over due process. This has led Kate Crawford, the cofounder of AI Now and leading researcher at Microsoft, to call for a fundamental right to "data due process." At a minimum, the risk assessment algorithms "should be available for public auditing, testing, and review, and subject to accountability standards."

Concerns over proprietary algorithms are real. The entities behind them have protected their methodologies and source materials, while hiding behind contracts with public entities and assertions of intellectual property. In the process, they have locked-out the public from knowing how they were constructed — not to mention the actual parties whose freedom is at stake. There is no way for anyone to verify the information upon which the algorithms are based or to check their math, much less test it for possible bias.

In one egregious example, the proprietor of one such algorithm was blatant in its social advocacy. The Laura and John Arnold Foundation filed an amicus brief in the case of *Holland v. Rosen* in order to stave off a constitutional challenge to New Jersey's new bail system, which has almost entirely eliminated financial conditions of bail. In that case, which is currently pending before the 2nd U.S. Circuit Court of Appeals, the plaintiff is arguing that he has a right to consideration of a financial condition of bail on a level playing field, along with all other non-financial conditions.

Filed by former U.S. Solicitor General Seth Waxman, the Arnold Foundation's entry into this case, is indicia of specific political bias by the proprietor of an algorithm. This is problematic because nearly every state using the algorithm allows not only consideration of financial conditions of bail *but defined financial conditions of bail as* bail. If proprietary algorithm providers are allowed to enter the world of advocacy, this places greater importance on the fundamental data due process and demands the need for absolute transparency in its implementation.

Regarding the issue of race, the nonprofit investigative publication ProPublica specifically accused one proprietary algorithm of being "biased against blacks." An examination of the research reveals that such bias is inevitable, which leads to critical questions: At what point does the amount of bias render the instrument as bad public policy? Can we determine when the bias has met the high hurdle of a disparate treatment claim? Similarly, should users and proprietors be required to meet the

standards of a higher regulatory bar — such as showing that it does not have a disparate impact upon protected classes — prior to using the algorithm?

The reward for implementing the risk-based system has been stated in simple terms: It reduces mass incarceration, keeps communities safer by reducing crime while on bail, and improves the rate of appearance in court. Unfortunately, to conclude that any of these goals have actually been achieved in jurisdictions that have moved to it would be difficult, if not impossible, to establish. In fact, in a landmark report published last month, George Mason University law professor Megan Stevenson opened by stating that, “virtually nothing is known about how the implementation of risk assessment affects key outcomes: incarceration rates, crime, misconduct, or racial disparities.”

Specifically, in Stevenson's research of over 1 million files, she concluded that the use of the risk assessment “did not result in any noticeable improvement in outcomes.” In fact, she added, it had “essentially no effect on releases, failures-to-appear, pretrial crime, or racial disparities in detention.” The vast amount of data she pored over included numerous years’ worth from Kentucky, which adopted the risk assessment algorithm from the Laura and John Arnold Foundation and positioned itself as a national leader in bail reform and pretrial release.

Despite her dismal findings, Professor Stevenson noted that the Arnold Foundation released its own study of the use of its risk assessment in various jurisdictions, and inexplicably touted its successes. Regarding Kentucky, the foundation released a report due to “external pressures,” which was ultimately removed from their website. Stevenson also pointed out an additional key concern with the Arnold Foundation’s suspect research — it was done on criminal cases during the pretrial phase, 83 percent of which were still open at the time their study was released.

While proponents continue to push the risk-based system, we would be wise to remember the words of former Supreme Court Justice Thurgood Marshall, a known skeptic of the use of risk computers to determine which individuals were “dangerous.” The federal government implemented the risk system in 1984 by virtue of passage of the Bail Reform Act of 1984. It was subsequently challenged from coast-to-coast, with the issue finally being upheld in *U.S. v. Salerno*.

In a scathing dissenting opinion, Marshall said, “Throughout the world today there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word, because their governments believe them to be ‘dangerous.’”

Today's bail reformers are aiming for this same law for the states. The question remains before us today — as it did then — should we label people as “dangerous”? And if we do, can we do so fairly, ethically and constitutionally, and in a fashion that will deliver the results that serves our society? It is probably fair to say that the answer is becoming less clear with every passing day.

Jeffrey J. Clayton is executive director of the American Bail Coalition.

Civil rights groups want to put bail bond industry on death row

BY JON SCHUPPE

Jan 17 2018, 10:15 pm ET

A team of civil rights groups said Wednesday they were launching a multifront crusade against the bail bond industry, which has emerged as their biggest opponent in [a movement to end America's reliance on cash bail](#).

"We want to put an end to the for-profit bail industry in the U.S.," said Udi Ofer, deputy national political director of the American Civil Liberties Union.

The effort relies on what Ofer described as a "public opposition campaign" aimed at turning voters and lawmakers against forces trying to preserve the centuries-old bail system, which reformers say preys on the poor and fuels mass incarceration.

Ofer and members of two similarly minded organizations, Color of Change and JustLeadership USA, outlined their plans in a call with reporters on Wednesday. They said they planned to "expose" the bail bond industry's profiteering from the system and its attempts to influence lawmakers; distribute petitions calling on lawmakers to resist such lobbying; hold "community forums" and explore the possibility of filing lawsuits against the industry.

"What we're seeing now is an evolution of the movement," Ofer said in an interview. "It's a product of the fact that the for-profit bail industry has been the primary opposition to bail reform."



A man walks by a bail bonds store on Oct. 20, 2011 in Reading, Pennsylvania. Spencer Platt / Getty Images file

Through legislation, lawsuits and judicial orders, the reformers have racked up a series of wins across the country, persuading local and state governments to replace bail with alternatives that focus on keeping only the most dangerous people locked up before trial. Many jurisdictions have started using algorithm-based risk assessment tools that help judges determine who should be detained.

Alaska this month enacted a system that forgoes bail. And on Wednesday, New York City's comptroller [called for a ban on commercial bail bonds](#).

Bail bond industry representatives, and individual bondsmen, say they perform an essential public service by helping to make sure defendants show up for court. They've argued that eliminating bail endangers the public, costs taxpayers money and violates constitutional guarantees of bail.

As the reform movement has gained traction, the bail bond industry, backed by big insurance companies, has stepped up to resist it. Facing slow extinction, the industry has backed two federal lawsuits in New Jersey, which last year all but eliminated bail. It has sued the New Mexico Supreme Court over new bail rules. It has defended itself against changes in Maryland. It has stepped into legal fights over bail in several big cities, including Houston, San Francisco and New Orleans. And it is backing candidates who it sees as potential allies.



A man poses with a sign at a recent bail reform vote in New Orleans. ACLU

"We have friends in the legislature who understand and appreciate our important role in the criminal justice system BUT we have to insure that they get re-elected in order to be there to help us in the future," the Texas Bail PAC [says on its website](#).

Jeff Clayton, executive director of the American Bail Association, which represents bail-bond companies, pointed out that many places that have eliminated bail have also allowed prosecutors to ask that certain defendants — those deemed the most dangerous or likely to flee — be detained before trial without a chance of release.

"If you think you're going to reduce mass incarceration you're sorely mistaken, because you're giving the government the power of preventative detention," Clayton said in an interview.

He also argued that there are effective ways to reduce prison populations that have little to do with bail, such as reducing the number of offenses that carry the presumption of arrest.

"They're attacking the wrong problem," Clayton said of the reformers.

Clayton said he saw California, Ohio, Florida, New York and Delaware as the biggest battlegrounds this year.

"I don't feel any more threatened because someone's starting another campaign," he said.

"What more can they do to you than what they're doing right now?"

The New York Times

Bail Was \$500, Money He Didn't Have. Atlanta Faces Calls for Change.

By RICHARD FAUSSET JAN. 11, 2018



In 2016, at least 890 people were transferred from Atlanta to the Fulton County jail after failing to make bail, the Southern Center for Human Rights found. Audra Melton for The New York Times

ATLANTA — The police arrested Randall McCrary, a mentally ill man, at a gas station on Oct. 22. They found him covered in his own waste and screaming at customers.

What happened next to Mr. McCrary, advocates say, was a depressingly common reality for poor people charged with minor crimes in Atlanta. The municipal court set his bail at \$500, the predetermined amount for a disorderly conduct charge. Mr. McCrary, 45, is indigent and could not pay.

So he waited, in jail, for more than two and a half months, at great cost to both local taxpayers and Mr. McCrary himself. While he was detained, the federal government discontinued his disability checks, said Sarah Geraghty, a lawyer for the Southern Center for Human Rights, who filed a petition Monday demanding his release.

Ms. Geraghty said Mr. McCrary's case exemplified the injustices inherent in Atlanta's misdemeanor bail system, which resulted in hundreds of poor people being locked up each year, sometimes for long stretches, because they had been assigned bail amounts they could not pay.

In 2016, at least 890 people were transferred from the city to the county jail after failing to make bail, the center found. They were held, many of them on minor charges like littering or driving without a license, for a total of 9,000 hours, costing taxpayers roughly \$700,000.

The petition for Mr. McCrary generated some publicity, and on Tuesday, he was released after an anonymous donor posted his bail.

Ms. Geraghty and her allies are now pressuring Atlanta to embrace a national wave of bail reform that has already taken hold in places like Chicago, Houston, New Jersey and, most recently, Alaska. Those who support reform argue that detaining the working poor over small bail amounts can ruin careers and disrupt families. They note that jail time racked up while waiting for a case to be resolved can sometimes exceed the jail time prescribed for the offense itself. They argue that such detentions violate the 14th Amendment's equal protection clause, because it denies arrestees "the pretrial freedom made available to those who can pay for release for the same offense," as Ms. Geraghty wrote in her petition.

And, they say, bail does nothing for public safety, using access to money rather than potential for danger to determine who goes free. "This is the right time for Atlanta to move away from wealth-based detention," Ms. Geraghty said.

Earlier this month, the Southern Center for Human Rights in Atlanta joined Civil Rights Corps, based in Washington, in sending a letter to Atlanta's new mayor, Keisha Lance Bottoms, asking her to lead a change in the city's bail system. The groups noted that they had forced changes in other Georgia cities by suing them.

But Atlanta already appears ripe for change. Ms. Bottoms has spoken candidly, and movingly, about the conviction of her father, the R&B singer Major Lance, on cocaine charges in the 1970s. "I learned very early on that good people sometimes make bad decisions," she said in a [biographical campaign video](#). Ms. Bottoms has pledged, in her agenda for her first 100 days in office, to create a criminal justice reform commission.

"When we know that we have people in the city of Atlanta who are incarcerated simply because they can't afford to pay to get out of jail, then that's certainly a concern," Ms. Bottoms said in a news conference Thursday. "And that's something I've asked our law department to take a very close look at, to see if there's something that can immediately be done to remedy this."



Sarah Geraghty of the Southern Center for Human Rights filed a petition asking Atlanta to release a man who couldn't post a \$500 bail. Audra Melton for The New York Times

The Georgia Legislature is also likely to take up the matter of misdemeanor bail this session, part of a multiyear criminal justice reform effort led by the Republican governor, Nathan Deal.

Ms. Geraghty's group has been combing the jail dockets to find people like Mr. McCrary, who had been detained for long periods for want of a few hundred dollars. In November, Ms. Geraghty filed another petition in Georgia Superior Court, demanding the release of a homeless man named Sean Ramsey.

Mr. Ramsey, 48, had been arrested on Sept. 19 for holding a cardboard sign at an intersection that read, "homeless please help." The charge was illegally soliciting motorists in a roadway. A day later, a municipal court set his bail at \$200, which he could not pay.

Then, it appears, Mr. Ramsey got lost in the system. He was not seen by a public defender, Ms. Geraghty said, even after Oct. 4, when court records show that his case was dismissed. He stayed in jail until Nov. 29 — more than 70 days — before the county solicitor reviewed Ms. Geraghty's petition, and he was released.

Civil Rights Corps and the Southern Center for Human Rights have raised similar issues in Calhoun, Ga., a small city about 70 miles north of Atlanta, filing a federal lawsuit that resulted in a judge's blocking the city's policy of holding poor people who could not afford bail. The case argues that a preset schedule that assigns bail amounts to crimes without considering the defendant's ability to pay is unconstitutional. The case is currently before the federal appellate court in Atlanta.

The Georgia Association of Professional Bondsmen and the American Bond Coalition, the state and national bail-bond industry groups, have filed friend-of-the-court briefs in support of Calhoun's policy, arguing that the preset bail schedules do not violate the equal protection clause.

"Under the city's bail schedule, a defendant's bail amount is initially set to match the crime he is accused of committing," the groups wrote in their brief to the appellate court, describing a system similar to Atlanta's. "The schedule does not consider, let alone discriminate on the basis of, the accused's wealth or poverty."

In an interview, Charles Shaw III, the president of the state bond industry group, made another argument. He said that without bail, there was no incentive "for the defendant to reappear in court for purposes of the administration of justice. Because no one has stake in the game."

That point is moot, of course, for those who cannot afford bail at all. And judges have other options, such as setting bail that the person owes only if they fail to appear in court.

Other grass-roots solutions have sprung up in the meantime. Dozens of groups around the country are offering to pay bail for people who cannot afford it. In Georgia, a coalition led by the activist group Southerners on New Ground, or SONG, has been collecting donations to pay bail for black women.

Since May 2017, said Mary Hooks, the SONG co-director, the coalition has bailed out more than 50 women arrested in the city of Atlanta, and more than 100 around the South.

A version of this article appears in print on January 16, 2018, on Page A10 of the New York edition with the headline: He Couldn't Pay \$500 Bail for Minor Charge. Atlanta Locked Him Away.

TRUMP CHOSE BIG BUSINESS OVER AVERAGE AMERICANS IN HIS FIRST YEAR

BY [CHIRAAG BAINS](#) AND [REGINA KLINE](#) ON 1/23/18 AT 3:20 PM

In his inaugural address, President Donald Trump said he'd fight for "the forgotten men and women of our country." One year later, his actions on civil rights tell a different story: He'll choose big business over the American people every time.

Take disability rights. Last month, Trump's Justice Department revoked legal guidance about the rights of workers with disabilities to avoid unjustified segregation by employers in sub-minimum wage, and sometimes [exploitative](#), factory settings called "sheltered workshops." Sheltered workshops often earn millions in profits while paying workers with disabilities poverty wages, including less than \$2 an hour, and sometimes just a few cents an hour. The workshops also receive public funding to help employees transition to the mainstream workforce. In practice, however, workers perform [repetitive manual tasks](#) sometimes for decades at a time. Approximately half a million people with disabilities work in these environments and [only 5 percent](#) ever graduate to community-based jobs. The result is often the unjustified segregation of workers with disabilities who can and want to be integrated into the broader workforce.

Under the Americans with Disabilities Act—and a 1999 Supreme Court decision, [Olmstead v. L.C.](#)—such unjustified segregation is illegal. State and local governments that run employment programs must ensure that people with disabilities work and receive services "in the most integrated setting appropriate."

DOJ's now rescinded guidance provided clear examples of how state agencies, schools, parents, families and service providers can assist workers with disabilities to avoid unjustified segregation in sheltered workshops. It described the rights of these workers to receive services like job training and coaching in typical community jobs that pay competitive wages.



President Donald Trump in the Oval Office on January 16.
OLIVIER DOULIERY-POOL/GETTY IMAGES

This push toward integration threatened the sheltered workshop business model. So the workshops fought back. This past August, a national trade association for sheltered workshops called ACCSES [lobbied](#) the Justice Department's new political leadership to withdraw the guidance. Four months later, without even bothering to meet first with disability advocates, the DOJ delivered.

DOJ's move drew [condemnation](#) from over 200 disability rights groups. They noted that while rescinding the guidance didn't change the law, it sent "the wrong signal" and would likely create confusion about legal obligations that are "a top priority for the disability community."

This isn't the only area where moneyed interests are driving the Trump administration's rollback on civil rights.

The Justice Department also [rescinded guidance](#) to state courts warning against incarcerating people for being unable to afford financial penalties like fines and court fees. The withdrawal was puzzling. After all, who would oppose the principle, announced by the Supreme Court more than 30 years ago in [Bearden v. Georgia](#), that "punishing a person for his poverty" violates the Constitution?

The answer: the bail bond industry. The Obama-era guidance also applied the Bearden principle to bail, calling the practice of incarcerating poor people unable to pay bail unconstitutional. In cities and towns throughout America, judges set bail without regard to a person's financial circumstances. Often, they rely on "schedules" where bail is based on the offense charged, without any individualized assessment of the defendant. The result is that every day, hundreds of thousands of people languish in jail pending trial not because they are too dangerous or too much of a flight risk to be released, but because they are too poor to buy their freedom.

In August 2016, the Obama Justice Department went a step further and [supported](#) a challenge to the use of bail schedules in Georgia.

These actions posed a direct threat to the \$2 billion bail industry. In a [blog post](#), the largest bail bond insurance company, AIA Surety, criticized DOJ for portraying "criminals" as "poor victims." Jeffrey Clayton, head of the trade group the American Bail Coalition, [lamented](#) that then-Attorney General Eric Holder had "egged on" private litigators and [predicted](#) that under Jeff Sessions, DOJ "won't get involved in any more of these bail cases."



White House Chief of Staff John Kelly (left) and Attorney General Jeff Sessions wait for Trump outside the White House on December 20, 2017.
BRENDAN SMIALOWSKI/AFP/GETTY IMAGES

It has been worse than that. In September, DOJ filed a [new brief](#) in the Georgia case *supporting* the use of fixed bail schedules to detain indigent defendants for up to two days—precisely the position advanced by the American Bail Coalition.

These aren't isolated examples. Sessions also reversed the decision to stop using private prisons, which [donated handsomely](#) to Trump's campaign and inauguration; Trump signed a law [making it harder](#) to bring class actions against banks; and Office of Management and Budget Director Mick Mulvaney [froze](#) the Consumer Financial Protection Bureau's regulatory work.

One year in, the abandonment of civil rights protections has been a hallmark of Trump's presidency. At the core of this rollback lies a deliberate choice: Instead of looking out for everyday Americans, Trump is doing the bidding of big business.

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The Columbus Dispatch

Jeffrey J. Clayton: Poll shows Ohioans reject bail reform

Posted at 12:01 AM

Updated at 6:52 AM

Proponents of bail reform continue to travel across the country, hawking their wares and touting the success level of their efforts as something of a landslide. But how much of that is spin and how much is reality? If you're more than a little jaded, you should be. Legislation similar to what is currently being proposed for Ohio failed to pass in six states, including California, New York, and Texas, just last year.

Has bail reform really captured the imagination of Ohioans, as their advocates would have you believe? The organization I represent recently contracted an independent polling service to conduct a representative survey of 100 randomly selected residents to get to the truth. The results support a much different view of the criminal-justice system than the one bail reformers have put forth.

Regarding criminal-justice reform in general, Ohioans made it absolutely clear where they stood. When asked to select the most important issues they felt the state legislature should focus on, the top answers were 1) dealing with repeat criminal offenders and 2) the opioid drug crisis. No other topic, including racial profiling or police misconduct, were even close. Moreover, not a single respondent flagged bail reform as an issue the legislature should take up.

Basically the public is not buying what bail reformers are selling. More than three-quarters of the poll-takers do not believe that if a defendant cannot afford bail they should still be released from jail. As for protecting the rights of victims of crime, an even-greater percentage of those polled felt that private bail agents do a better job on behalf of these individuals rather than releases on promises to appear and supervision by the state.

In addressing the growing opioid drug crisis in Ohio, 85 percent said that now is not the time to make it easier for criminal defendants to get out of jail.

Meanwhile, the state legislature is considering new laws that would rely on a risk-assessment tool based on computer algorithms to decide who gets out of jail — and under what conditions they are released. The survey revealed such a move would not be popular with the public, with 59 percent of respondents saying they did not support the use of these systems.

When posed with the question of how they felt about such a system being run by third parties, the level of disagreement jumped even higher, with a whopping 85 percent rejecting the use of proprietary criminal-justice algorithms.

As Ohio lawmakers begin serious consideration of bail reform, they should be reminded of the will of the people. The state's residents want their focus to be on what matters to them — most importantly, finding solutions for the opioid crisis and dealing with the problem of criminal recidivism. No matter what bail-reform advocates are trying to sell, it is clear that their claims of a bail-reform tidal wave don't even register so much as a ripple with the public.



Jeffrey J. Clayton is the executive director of the American Bail Coalition.



Closer Look: Eliminating Cash Bail Bonds; New Approach to Math at KSU; And More

EMILIA BROCK • JAN 29, 2018



STEM undergraduate students at Kennesaw State will soon be seeing a new approach to teaching introductory mathematics courses.

CREDIT PIXABAY IMAGES



53:47 | Play story

Monday on “Closer Look with Rose Scott”:

- **0:00:** Mayor Keisha Lance Bottoms recently announced that her administration is proposing legislation to eliminate cash bonds to secure release from the City of Atlanta Detention Center following an arrest for violation of city ordinances. Atlanta is among many cities looking to eliminate cash bonds for low-level offenses. But, the opposition says that’s a problem too. We hear from Jeff Clayton, executive director of the American Bail Coalition.
- **12:34:** Atlanta has made the shortlist of 20 cities that could become home to Amazon’s second headquarters. So, how can Atlanta close in on that top spot? We ask our Amazon expert John Haber, CEO of Spend Management Experts.
- **37:01:** Kennesaw State University undergraduate students pursuing STEM degrees will see a new approach to teaching introductory mathematics courses. The university is one of only a handful invited to join the Association of Public and Land-grant Universities (APLU) in working to scale the adoption of active learning for undergraduate pre-calculus and calculus instruction. We learn more from Dr. Kadian Callahan, assistant dean for faculty and student success, and associate professor of mathematics education at KSU.



Closer Look: Keith Parker, President and CEO of Goodwill of North Georgia; I Am Midtown; And More

CANDACE WHEELER • FEB 1, 2018



Goodwill President and CEO Keith Parker speaks with Rose Scott at the Goodwill Store and Donation Center on Piedmont Road in Atlanta, Georgia on Tuesday, January 16, 2018.
CREDIT IAN PALMER



1:01:38 | Play story

Thursday on “Closer Look with Rose Scott”:

- **0:00:** Increased noise complaints in Midtown are at the center of a dispute between businesses and some new residents. With growing concerns that the LGBTQ community may be getting priced – and pushed – out of the neighborhood, a new group called I Am Midtown formed, with the hopes of preserving Midtown culture. We’ll speak with Lydia Gerzel, who sparked the #IAMidtown hashtag, and Stephen Beckwith, a member of the group and realtor at Atlanta Fine Homes Sotheby’s International Realty.
- **19:30:** Former MARTA CEO and General Manager Keith Parker is in a new role. We’re out and about with Parker as he share his plans and vision as president and CEO of Goodwill of North Georgia.
- **46:15:** We continue to look at the issue of cash bonds, following a recent announcement from Mayor Keisha Lance Bottoms that her administration is proposing legislation to eliminate cash bonds to secure release from the City of Atlanta Detention Center following an arrest for violation of city ordinances. On Monday, we spoke to the Executive Director of the American Bail Coalition. Tuesday, we looked at the role of public defender. Today, we hear from Chris Blaylock, a New Jersey bail bondsman who says that his business has been severely affected by bail reform in the state.

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CASH BAIL PUNISHES POOR, BUT WHAT'S THE ALTERNATIVE?

BY [DAVE ROOS](#) FEB 14, 2018



A bail bonds office sits on the edge of downtown Las Vegas, Nevada. Much of the U.S. has operated under a cash bail system for decades upon decades, but some states are starting to push bail reform measures that don't involve posting cash for a defendant to be released. GEORGE ROSE/GETTY IMAGES

If you're arrested in most cities and towns in America, you'll be fingerprinted, booked and tossed in a jail cell until the judge sets your bail. Technically, bail means any kind of [conditional release](#) from custody between your arrest and your actual trial date. But in most cases, bail means money.

Cash bail is one of the oldest ways of ensuring that an accused criminal shows up for trial. [Dating back](#) to the medieval Anglo-Saxons, cash bail allows a defendant to be released from jail before trial by giving the court cash or collateral. The money or property is returned to the defendant if, and only if, they show up to court.

Today, most cash bails aren't paid directly by the defendant, but by a third-party bail bonds agent, also known as a surety bondsman. That's because the cash bail schedules used by most judges — X crime equals X dollars in bail — don't factor in a person's ability to pay. For example, if you were to look at the [2018 bail schedule for Orange County, California](#), you'd see that the bail for residential burglary is set at \$50,000.

A bail bonds agent charges 10 percent of the full amount (nonrefundable) for your release and promises the court to pay the balance if you don't show up. They also promise to hunt you down and collect on your debt.



Wondering how expensive bail can get? Bail for former Trump campaign chairman Paul Manafort (C) was set at \$10 million. Manafort was arrested on charges of both money laundering and failure to file federal disclosures.

ALEX WONG/GETTY IMAGES

But bail bonds agents don't have to post bail for everybody. Some people, like drug addicts and repeat offenders, may be too risky. And others are simply too poor to cover the 10 percent fee. So they sit in jail awaiting trial, sometimes only for a few days, but often for months, and in extreme cases, [for years](#).

Currently 443,000 people who haven't been convicted are sitting in America's jails awaiting trial, [says the Prison Policy Initiative](#). That's seven out of every 10 people in jail who have yet to be convicted or sentenced. (Note that jails aren't the same as prisons. Jails are designed for shorter stays, whether it's a short sentence or pretrial detention.) The total number of Americans incarcerated in both jails *and* prisons is more than 2.3 million, according to a [2017 report by the nonprofit group](#).

The real crime, for criminal justice reform groups like the [Pretrial Justice Institute](#), is that the cash bail system produces two very different outcomes depending on how much money the defendant can scrape together. A person arrested for felony assault, who poses a potential safety risk to the community, could walk free if they make bail. While a person arrested for misdemeanor shoplifting, could sit in jail for weeks because they can't come up with a few hundred bucks for bail.

"Money has now become the primary determining factor of whether or not you're released," says Rachel Sottile Logvin, vice president of the Pretrial Justice Institute, which advocates for eliminating cash bail entirely and "maximizing release" by moving to a [risk-based system](#) that assesses a defendant's threat to public safety if released, and his or her likelihood of appearing in court.

Bail reform isn't a new issue. Speaking at the 1964 National Conference on Bail and Criminal Justice, Attorney General Robert Kennedy concluded:

What has been made clear today, in the last two days, is that our present attitudes toward bail are not only cruel, but really completely illogical. What has been demonstrated here is that usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?

But despite being on reformers' radar for more than 50 years, only recently have city and state governments, and judges begun to really do something about bail. New Jersey [passed bail reform](#) in 2014 and launched its new assessment-based system in January 2017. The Maryland supreme court ruled in February 2017 that defendants can't be held in jail pretrial simply because [they can't afford bail](#). And bills have been introduced in states like California, Connecticut and New York to reduce the reliance on cash bail for pretrial release.

"We've been around for 40 years as a nonprofit, and only in the last five has our phone been ringing off the hook," says Sottile Logvin, "but we've been waiting."

The bail bond industry has been [lobbying hard](#) against changes to the cash bail system, which it insists is still the best way to ensure that defendants won't skip out on their court date.

Jeff Clayton is executive director of the [American Bail Coalition](#). He takes issue with the statistic that seven in 10 people in jail are awaiting trial and haven't been convicted or sentenced. Clayton insists that most detainees aren't there because they can't pay bail, but because the judge has placed them on "other holds" for violating probation or a pending charge in another jurisdiction. Also, to say they haven't been convicted ignores the fact that many have a long history of prior convictions.

"The real question," asks Clayton, "is what would the alternative [to cash bail] be and would it look any better?"

For that, there's really only one place to look, and that's the [Pretrial Services Agency](#) (PSA) in Washington, D.C. The PSA, an independent federal agency with a 45-year track record, is widely regarded as the gold standard of pretrial criminal justice reform. While cash bail is still legal in D.C. and used in rare cases, the PSA releases 80 percent of defendants on their own recognizance, meaning nothing but a pledge to return for trial.

Even without bail, PSA has seen 90 percent of released defendants [appear at all of their scheduled court dates](#) and 91 percent remain arrest-free between pretrial release and their trial date.

How does it work? The PSA uses a risk-assessment tool that calculates each defendant's real threat as a safety risk or flight risk, using metrics like the defendant's current charges, criminal history, age and other attributes (race not among them). [Based on this assessment](#), the system recommends the "least restrictive, non-financial release conditions."

Next, an army of PSA caseworkers sits down with each defendant, particularly the higher risk individuals, to lower their barriers to success. There's on-site drug testing and an in-house drug treatment facility. Defendants with mental health issues are referred to community counseling partners. PSA can provide help with employment and housing to help disrupt cycles of poverty and crime.

If a defendant skips a court date, the judge doesn't automatically issue a bench warrant for his or her arrest. The PSA caseworkers conduct a "failure to appear investigation," which includes phone calls to the defendant, the defendant's family, to other jurisdictions and even to hospitals, if the defendant has known health issues.

All of this costs money. The PSA has 350 full-time employees (75 percent are caseworkers) with an [annual budget](#) of \$65 million.

"Supervision and all these alternatives are hugely expensive," says Clayton of the American Bail Coalition, noting that New Jersey's new system, which follows the PSA model closely, may cost in the [hundreds of millions of dollars](#) to operate.

Leslie Cooper, director of the PSA, says that the agency's core tenants — risk assessment and release conditions tailored to that risk — are "scalable and replicable anywhere" and can be customized to fit a jurisdiction's budget. What's harder, says Cooper, is the culture shift that needs to happen from within.

"If a jurisdiction's culture of criminal justice has developed around the use of money bond as a system, particularly money bonds that are secured by third party bail bondsman, it's a huge cultural change to tell people that your system can be equally if not more effective when you take away money," says Cooper. "Nothing sells the case better than being able to say it works. And we have the numbers to prove it."

NOW THAT'S COOL

The bail industry and criminal justice reformers rarely see eye to eye, but Clayton of the American Bail Coalition agrees that diverting some detainees to drug and mental health treatment is the way to go. "People with mental health and drug issues and all these problems, nobody's going to post bond for them," says Clayton. "Does it mean that we need to keep all these people in jail? No."



DALLAS NEWS
by The Dallas Morning News



On the one hand, it was a kick in the gut. But it was also a roadmap. That's how Dallas County officials see a much-anticipated ruling by a federal appeals court on bail reform.

For years, county leaders and judges have been in talks to overhaul the criminal bail system to make it easier for poor suspects who aren't dangerous to be released from jail while they await trial.

The ruling Wednesday by the 5th U.S. Circuit Court of Appeals added urgency for Dallas County to change its system. The ruling agreed with a lower court that Harris County's system was unconstitutional — meaning that Dallas County's current system would likely also be, officials said.

But leaders said the ruling also provided important guidance on what the county needs to do to protect people's rights — and what they don't need to do. The appeals panel struck down a lower court's order for Harris County to release all misdemeanor arrestees within 24 hours — a situation that officials had complained was chaotic and unsafe.

Dallas County leaders, facing a new lawsuit that largely mirrors the one in Houston, expressed relief that the appeals court found the 24-hour rule to be an overreach.

"It gives us a framework to work and it gives us a good pathway," Commissioner John Wiley Price said Thursday. "Dallas County has been going in the right direction, and the court just basically said that. It took us where we felt like we need to go."

The county is still working to pick a risk assessment tool to provide judges and their appointed magistrates more information about defendants, such as their estimated level of danger and flight risk. Dallas County magistrates set bonds based on a "bond schedule," which calls for certain dollar amounts for each level of criminal offense. The magistrates aren't provided much, if any, other information about defendants so they rarely deviate from the bond schedule, officials say.

But the 5th Circuit ruling states that a county must provide each defendant a "case-by-case evaluation of a given arrestee's circumstances, taking into account the various factors required by Texas state law (only one of which is ability to pay)." To do so, each defendant must have an

opportunity to be heard and submit evidence within 48 hours of arrest before the judge or magistrate makes a bond decision, the panel ruled.

Judges must consider the following factors in setting bail, under state law: the defendant's likelihood to appear in court, public safety, the crime and the defendant's ability to pay. The law also requires that bail not be used as "an instrument of oppression."

The appeals court found that Houston's poor "sustain an absolute deprivation of their most basic liberty interests — freedom from incarceration."

The groups suing Dallas County believe the ruling bodes well for their lawsuit, as the county's system is even less progressive than Harris County's, they say. That's because in Dallas, bails are set in the jail in secret hearings without public access, and magistrates are given little to no information about defendants, while Harris County has risk assessments.

"The Dallas County system is worse than the Harris County system in a lot of ways," said Elizabeth Rossi, an attorney with Civil Rights Corps, which is suing Dallas County along with the American Civil Liberties Union, the Texas Fair Defense Project and the ACLU of Texas.

"If the Harris County system violates equal protection and due process, then Dallas County's does in the extreme," Rossi added.

Dallas County officials are mostly in favor of bail reform but may still fight the lawsuit because they disagree with the plaintiffs about how it should be done. The county has not filed a response to the Jan. 21 complaint.

Harris County has spent \$5.2 million on outside attorneys fighting the bail lawsuit there, according to media reports.

"Hopefully Dallas County will agree to much-needed reforms without expending \$5.2 million of public funds defending an indefensible system that devastates lives and wastes county resources," said Rossi, the plaintiffs' attorney.

The ruling was also lauded by the bail industry because the appeals court found that bail is not unconstitutional just because a defendant cannot afford it. Instead, other factors such as a person's level of threat and flight risk must be considered.

"There is not a right to affordable bail, but, rather, a right to procedural due process, so that judges can make an informed decision regarding excessive bail and sufficient sureties," the American Bail Coalition said in a news release.

Buckley Chappell, owner of Cowboy Bail Bonds in Dallas, said the ruling was good for reinforcing that public safety is a top priority. He also hopes the county, in doing its overhaul, will ensure that the scores of poor detainees who are expected to be released from jail on non-cash bonds are monitored, helped and kept informed of court dates.

"The responsibility is to build a system that keeps public safety number one," Chappell said. "And number two, to create a system where so many people don't fail."



COURT OPINION COULD SIGNAL FURTHER CHANGES IN TEXAS BAIL BOND POLICY

By Max Gorden | February 16, 2018 @7:02 PM

SHARE



TEXAS - Texas civil rights groups and the bail industry are both claiming victory after a federal appeal's court handed down its decision this week in a contentious case over bail bonds.

The ruling is sending shockwaves through the Texas justice system, and could give a window into further changes to come.

The Fifth Circuit Court of Appeals upheld a lower court's ruling that Harris County discriminated against poor people accused of crimes by holding them in jail even when they were presumed innocent because they couldn't afford bail.

"The procedures that were in place in Harris County were not cutting it," said Susanne Pringle of the [Texas Fair Defense Project](#).

It's been a years-long legal battle after the Texas Fair Defense Project filed a case against the county on behalf of three low-income plaintiffs charged with misdemeanors who couldn't come up with enough cash to pay for bail.

"The theory of the case is that it's a violation of equal protection rights to hold someone on bail that they can't afford," Pringle said. "Counties in Texas are already thinking about what they can do to be more fair, and this ruling says to counties 'we can't automatically assess bond. We actually need to have a hearing. We actually need to consider ability to pay.'"

The Fifth Circuit recommended that poor people in Harris County should have the chance to argue for a low or no cost bond within 48 hours of their arrest.

Meanwhile, those in the bond industry said it's a win on their end as well.

"The ruling, in our view, upholds the use of preset bond amounts," said Rodney Vannerson, the owner of Aaron Bonding Agency in Harris County.

Some say the court's opinion gives the bond industry a stamp of approval.

But bondsmen still say they want more guidance from the state lawmakers, rather than following regulations that vary from county-to-county.

"There has to be a standard established, and I think that's what's the legislature is going to work on this upcoming session," Vannerson said.



Should CA reform its cash bail system for low income defendants?



The Sheriff's Department Inmate Reception Center in Los Angeles, California on January 30, 2015.
[MARK RALSTON/AFP/GETTY IMAGES](#)

AirTalk® | February 21, 2018

A San Francisco case of a defendant with bail set at \$350,000 is getting a lot of [attention](#).

The defendant, 64-year-old Kenneth Humphrey, is accused of stealing a \$5 bottle of cologne and has been detained since May because he cannot make bail. Last month, this prompted a state appeals court to order a new bail hearing for Humphrey, setting off a new standard for the state.

In the current system, bail amounts are determined by a chart, not the defendant's income. California Attorney General Xavier Becerra [announced](#) today that he will not appeal a state appellate court's ruling in the case and, in a Sacramento news conference, [said](#) that setting high bail for low income defendants perpetuates a poverty cycle. Rather than continue with the traditional system, Becerra advocates for setting bail into fixed amounts depending on the defendant's charges and record.

But Los Angeles County District Attorney Eric Siddall has [pointed out](#) that Humphrey had four prior robbery offenses, and many critics of bail reform argue that bail has already been set to match the defendant's potential threat

to the public. So what do you think about the suggested change? Should a person's income be considered when setting bail?

GUESTS:

Jeff Adachi, the public defender of San Francisco

Eric Siddall, Los Angeles County Deputy District Attorney; vice president of the [Association of Los Angeles Deputy District Attorneys](#), a collective bargaining agent representing nearly 1,000 Deputy District Attorneys who work for Los Angeles County

San Francisco Chronicle

California's attorney general pushes state bail system toward major overhaul

By **Bob Egelko** and **Annie Ma**



Photo: Jessica Christian, The Chronicle

Updated 8:04 pm, Tuesday, February 20, 2018

The bail system in California is set to undergo a major shakeup, starting next week, after state Attorney General Xavier Becerra announced Tuesday that he would not appeal a court ruling that prohibits holding criminal defendants in jail because they can't afford to pay their way out.

“Bail decisions should be based on danger to the public, not dollars in your pocket,” Becerra said at a Sacramento news conference. He said keeping defendants locked up before trial, simply because they can't pay the amount set by the judge for pretrial release, “entrenches people in a cycle of poverty,” while wealthier defendants charged with the same crimes are set free.

The ruling was issued Jan. 25 by the First District Court of Appeal in San Francisco. Becerra's decision not to seek review by the state Supreme Court means the appellate decision will become final on Saturday, 30 days after it was issued, and binding on trial courts throughout California.

Judges will then have to change their long-standing practice of setting bail in fixed amounts determined by the crimes charged and the defendant's record. The ruling does

not prohibit monetary bail, but says it must at least be set at levels a defendant can afford, unless the judge cites evidence that the defendant is too dangerous to release before trial.

Recommended Video:



California Attorney General Xavier Becerra is vowing to continue his fight for state laws one day after President Trump's Administration announced three new policies that could have a big impact on California.
Media: KCRA

The ruling also changes the political landscape on the issue.

Legislation sponsored by state Sen. Bob Hertzberg, D-Van Nuys (Los Angeles County), and Assemblyman Rob Bonta, D-Alameda, that would have largely replaced cash bail with pretrial monitoring and other safety measures, cleared the state Senate last year, but has been held up in the Assembly to await negotiations with Gov. Jerry Brown and others who have concerns about the bill or are opposed to it.

Now foes of the cash bail system have a new bargaining chip — either pass a new law or leave a ruling in place that dramatically changes the current system. California’s chief justice, Tani Cantil-Sakauye, has also criticized cash bail and appointed a task force that has recommended changes.

Hertzberg said the court decision, Becerra’s action and Cantil-Sakauye’s support “overwhelmingly make the case for bail reform” and for passage of his bill.

The chief supporter of the system has been the bail bond industry, which contends cash bail is the best way to assure a defendant’s appearance in court. Bail bond companies post the full amount of bail in exchange for a 10 percent fee.

Jeffrey Clayton, executive director of the American Bail Coalition, an association of insurance companies that underwrite bail bonds, pointed out that Hertzberg’s bill is opposed by police chiefs and prosecutors as well as bail bond companies. “I don’t think anybody’s come up with too great of a solution just yet,” he said.

Clayton said Becerra's decision was disappointing, but didn't necessarily doom the current system.

"Courts are going to have to evaluate (bail) on a case-by-case basis," he said.

Becerra was criticized more harshly by a political rival, Steven Bailey, a retired El Dorado County judge who is running for attorney general as a Republican in the June primary. Becerra, a Democrat, was appointed attorney general by Gov. Brown to replace Kamala Harris after her election to the U.S. Senate in 2016, and is also entered in the primary along with another Democrat, Dave Jones, now the state's insurance commissioner.

Bailey called Becerra's position on bail "dangerous," and said, "It is loud and clear Becerra cannot be trusted to put public safety ahead of politics." But Becerra said his position promotes public safety.

"Today's bail system doesn't make you safer, because if you've got the money and you're dangerous, you still get out," he told reporters.

Support for cash bail, meanwhile, has been declining nationwide. Federal courts have moved away from it, and a number of other states have already passed laws similar to the Hertzberg-Bonta proposal.

In nine coordinated rallies outside county courthouses around the state Tuesday, public defenders and activists joined to call for an end to the bail system.

"Money bail has nothing to do with public safety and everything to do with coercing guilty pleas from poor people," who have no other way to get out of jail before trial, said Chesa Boudin, a deputy San Francisco public defender.

In a separate case, a federal judge in Oakland has cleared the way for a trial on the constitutionality of the bail system in California. Bail bond companies have been allowed to enter that case and defend the law, but they were unable to take part in the state appellate case in San Francisco.

That ruling involved Jeffrey Humphrey, charged with entering the apartment of a 79-year-old man last May, threatening to put a pillowcase over his head and stealing \$5 and a bottle of cologne.

Humphrey, 63, a retired shipyard worker who lived in the same building, had been addicted to drugs most of his life, was enrolled in a rehabilitation program and had felony convictions from 1992 and earlier. A judge initially set his bail at \$600,000 based on the charges and Humphrey's record, and later lowered it to \$350,000 based on his willingness to undergo treatment. Humphrey could not afford the reduced amount and remained in jail.

“A defendant may not be imprisoned solely due to poverty,” the appeals court said last month in ordering a new bail hearing.

The trial judge must determine how much bail Humphrey can afford and whether he can be safely released without bail, Presiding Justice J. Anthony Kline said in the 3-0 decision. Higher bail is allowed only if the judge finds, by “clear and convincing evidence,” that there is no other way to protect the public or to assure Humphrey’s return to court after his release, Kline said.

The ruling is not yet final. So far, only one Superior Court judge in San Francisco is following its standards, said Public Defender Jeff Adachi at Tuesday’s rally outside the city’s criminal courthouse. Adachi declined to identify the judge.

The Humphrey decision “is the law today,” Adachi declared. “That’s why we’re here today. To demand accountability, that the judges follow the law.”

Bob Egelko and Annie Ma are a San Francisco Chronicle staff writers.

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DALLAS **Observer**



Bail reform isn't good for those in the bond business.

Shutterstock

Appeals Court Ruling Challenges the Way Texas Counties Set Bail

[CHRISTIAN MCPHATE](#) | FEBRUARY 22, 2018 | 4:00AM

A week has passed since the 5th U.S. Circuit Court of Appeals issued a much-anticipated court ruling in *O'Donnel v. Harris County*, in which justices reaffirmed a lower court's ruling that the cash bail system works for the rich but not the poor.

"The wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration," Judge Edith Brown Clement wrote in the appellate opinion. "The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart."

It's a decision that could lay precedent for a recent federal lawsuit involving the Dallas County Jail over its cash-bail system. Filed by civil rights groups on behalf of six plaintiffs who had been incarcerated at the jail, the lawsuit accuses county officials of operating a two-tiered system of justice based on wealth, similar to Harris County officials, and violating due process and equal protection clauses of the U.S. Constitution.

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Harris County officials, and violating due process and equal protection clauses of the U.S. Constitution.

"When you have two people who look the same, and the only difference is the money in their pocket, the poor person remains in jail and the rich person walks free." - attorney Trisha Trigilio



"When you have two people who look the same, and the only difference is the money in their pocket, the poor person remains in jail and the rich person walks free," says Trisha Trigilio, an attorney for the American Civil Liberties Union of Texas. "This is a landmark ruling that undermines the way pretrial operates in jurisdictions across Texas."

Although civil rights groups consider it a landmark victory, proponents of the cash-bail system consider it a small win and one that works more in their favor, says Jeff Clayton, policy director for the American Bail Coalition, a trade association for bail bond companies, which collect fees to post bail for defendants.

The American Bail Coalition led its Feb. 15 press release with a snippet of the 5th Circuit's ruling: "Bail is not purely defined by what the detainee can afford."

That means no automatic get-out-of-jail-free card for poor people charged with misdemeanors, but that was hardly the point of the court's ruling. As Clement wrote in the next paragraph, "state law forbids the setting of bail as an 'instrument of oppression.' Thus, magistrates may not impose a secured bail solely for the purpose of detaining the accused. And, when the accused is indigent, setting a secured bail will, in most cases, have the same effect as a detention order."

The upshot of the ruling is that setting bail amounts based solely on a rigid schedule and jailing poor people merely charged with crimes because they're too poor to pay a bondsman's fees isn't allowed. In their ruling, the 5th Circuit justices agreed, for the most part, with the lower court's decision, but they found the remedies proposed overly stringent.

Harris County will still have to fix its pretrial procedures. Poor defendants who successfully file affidavits proving they're indigent will be entitled to bail hearings within 48 hours.

In late January, the ACLU of Texas, the Civil Rights Corps and the Texas Fair Defense Project filed a lawsuit against Dallas County, its sheriff and the county's judges and magistrates for violating constitutional rights of people arrested for misdemeanors and felonies in regards to the cash bail system.

"No person should be kept in a cage just because she doesn't have enough money to make a payment," Civil Rights Corps attorney Elizabeth Rossi said in the Jan. 22 press release. "The decision to throw a person who is presumed innocent in a jail cell is a serious one. And a person's access to money should not be the only factor that determines whether she is free or is in jail."

Bond company lobbyists don't contest that people should be given bail hearings within 48 hours, but that wasn't happening in Harris County.

It's the same issue people incarcerated in the Dallas County Jail are facing. Trigilio with the ACLU of Texas says Dallas County doesn't have a process at all. Arrestees don't get individualized inquiries at 48 hours and often languish in jail for weeks if they can't afford bail. It's a similar system set up in major counties across Texas, she says.

"[The appellate opinion says] that when bail imposed almost automatically detains poor people, it violates due process," Trigilio says. "That is how the Dallas system works."

Dallas County has been taking steps to fix the problem. In June, it created a pretrial services division to make moves to shift low-risk inmates and people with mental illness out of jail, where feeding and housing them costs the county millions of dollars each year. It's also focusing on a risk-based assessment to determine if they're high, medium or low risk to skip their court hearing.

Although a final fix for Dallas County's broken bail system is still out of reach, a criminal justice reform advocate spoke with county commissioners in early February to discuss a system that isn't biased toward those who can get cash quickly. Sandra Guerra Thompson, the director of the University of Houston's Criminal Justice Institute, advised commissioners that the best way to fight the ACLU's lawsuit and achieve justice for those arrested in Dallas County involves releasing as many people as possible before trial with as few conditions as possible. Thompson said that warehousing people in jail before trial costs taxpayers money and increases the chance that others will commit crimes when they get out, in some cases to get bail money for their friends and family members in jail.

"That's why [bail reform] has become such a big civil rights issue," she told commissioners. "In Texas, the pretrial detainee population makes up 75 percent of all jail inhabitants."

Trigilio says the bail industry is simply trying to gloss over an important point and that the lower court reviewed social science studies and found that paying bail in advance doesn't improve the rates of appearance in court or decrease crimes after a

defendant's release. Most people who go through the system, she says, aren't a flight risk.

"It is no more effective than having someone sign a [personal recognizance] bond," she says. "[The government] would do well to have [more] people sign a PR bond. The system would be fairer, and it would be more efficient."



Christian McPhate is an award-winning journalist who specializes in investigative reporting. He covers crime, the environment, business, government and social justice. His work has appeared in several publications, including the Dallas Morning News, the Fort Worth Star Telegram, the Miami Herald, San Antonio Express News and The Washington Times.

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Forum

California Likely Headed for Major Bail Reform



Host: **Michael Krasny**
FEBRUARY 22, 2018

California and other states look to be on the verge of reforming their bail systems. Lawmakers and the state's top judge say the current system disproportionately punishes the poor and traps people in jail for small crimes they may not have even committed. Advocates for the current system say cash bail is the best way to ensure people show up for court. We'll take up the debate.

Guests:

Marisa Lagos, reporter, KQED's California Politics & Government Desk

Jeffrey Clayton, executive director, American Bail Coalition

Robert Weisberg, professor of law, Stanford Law School; co-director, Stanford Criminal Justice Center



NATIONAL PULSE

Bail industry battles reforms that threaten its livelihood

BY [JASON TASHEA](#)

[MARCH 2018](#)



Illustration by Sara Wadford.

A little more than a year ago, New Jersey all but eliminated cash bail for criminal defendants, except for those charged with certain violent offenses.

Since the reforms took effect Jan. 1, 2017, the county jail population is down 16 percent, says then-attorney general Christopher Porrino, who left office on Jan. 16 when the new governor was sworn in. And preliminary numbers show a 5 percent decrease in violent crime over the year.

The reforms, Porrino says, address two problems: First, that violent repeat offenders were often able to buy their way out of jail; and second, that low-level, nonviolent offenders often languished in jail because they didn't have the means to post bail.

Now, instead of needing money to attain freedom, which disproportionately punished poor and minority people, defendants are held or released because of their risk to society. "This is one of the best examples of where government can work," Porrino says.

Determining who is held in jail and released is done, in part, through an algorithm called a risk assessment, a program being challenged by the bail industry, whose financial future is increasingly threatened. Although reformers say risk assessments decrease crime rates, reduce jail populations and increase government savings, the bail bond industry sees a permissive tool that is bad for public safety and an existential threat. (See "[Calculating Crime](#)," *ABA Journal*, [March 2017](#).)

"Pretrial assessment represents a quantum step forward over the current subjective—and too often biased—decision-making," says Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, a policy group in Rockville, Maryland, and co-chair of the ABA Pretrial Justice Committee.

In the most basic sense, a risk assessment takes a series of factors about an individual facing detention and provides an output, such as the likeliness that the person will show up to court or commit another crime.

While there are numerous risk assessment methods, one of the fastest proliferating tools is the Laura and John Arnold Foundation's Public Safety Assessment, or PSA, which has been piloted in about 40 jurisdictions, including New Jersey.

Jeff Clayton, executive director of the American Bail Coalition, says risk assessments originally "were one more tool in the toolbox" that a judge could use to set bail. Although he has concerns regarding the underlying research and data that led to the creation of the PSA, he now describes the algorithm as a mechanism "to completely get rid of bail."

A NATION LOCKED UP

Every year about 12 million Americans are booked into local jails. The Pretrial Justice Institute says about three out of five inmates are awaiting trial, costing taxpayers about \$14 billion per year.

For judges, as a paper from the Arnold Foundation notes, the "decision—whether to release or detain a defendant—is far too important to be left to chance." The foundation determined a data-informed risk assessment was the way to close this subjectivity gap.

Tools such as risk assessments are seen as a complement to implementing bail reform. In their absence, limiting cash bail can have mixed results. In Maryland, for example, a new judicial rule states that money bail should be used as a last resort. However, this led to only a slight increase of those being released in Baltimore, about 8 percent, and an increase of more than 140 percent of those held pretrial without bond, says Zina Makar, co-director of the Pretrial Justice Clinic at the University of Baltimore law school.

She says risk assessment tools—alongside services such as counseling—can improve the decision-making process and give judges the comfort to release people pretrial. But the bail industry isn't convinced risk assessments work.

RISKY BUSINESS

In New Jersey, the Arnold Foundation is a named defendant, alongside Porrino and then-Gov. Chris Christie, in a wrongful death suit that also seeks to halt the use of the PSA. The complaint alleges that Christian Rodgers, 26, was fatally shot by a man released under the risk assessment regime. He had been arrested on weapons charges before his release.

Rodgers' mother argued in her complaint that because of the PSA, "throngs of violent criminals were released into the streets of New Jersey's neighborhoods." The complaint argues that the PSA's formula undervalues certain cases that involve the unlawful possession of a firearm. (The case is being backed by Duane Chapman, a reality television personality also known as "Dog the Bounty Hunter" who chases bail skippers across the country.)

After Rodgers' killing, the attorney general's office released guidelines, which include the presumption that prosecutors will seek to hold people in pretrial detention on firearm possession charges (among other violent crimes).

While the lawsuit is pending, the Arnold Foundation is researching the impact of its risk assessment system and how it can be improved as it is rolled out to other jurisdictions, says Matt Alsdorf, president of Pretrial Advisors and previously vice president of criminal justice at the Arnold Foundation.

Although curtailing cash bail is a current topic in the states, the federal system rejected this approach in 1966 and tailored release decisions to the risk posed by the defendant. For Brett Tolman, a former U.S. attorney for Utah, his experience in the federal system bolsters his support of bail reform.

"I got to see how that worked," Tolman says of the federal risk-based system. He says it was not perfect but thinks the current system is broken and being held hostage by the bail industry.

Not yet to the point of litigation, rules were proposed by the Judiciary Courts of the State of Utah that would move toward a risk-based system and a pilot of the PSA. But the legislature asked the courts to hold off after the industry intervened.

This hurdle has the potential to be a brutal fight. "If it sounds too good to be true, then probably it is," said Wayne Carlos, president of the Utah Association of Professional Bondsmen and Agents, during a legislative hearing in September. "What is the real reason why the courts are trying to push this program? Let's find out before it's too late."

Tolman says the bail industry used "misinformation and fear tactics" to get the Utah legislature to intervene after the legislative auditor general called for bail reform and the adoption of a risk assessment tool in 2017.

With a temporary victory for the industry, the courts are in a "wait-and-see sort of approach," says Geoffrey Fattah, spokesman for the Utah state courts.

To the southeast, New Mexico's bail reform advocates successfully passed a state constitutional amendment in 2016 to decrease the state's reliance on cash bail while keeping it as a limited option, says Artie Pepin, director of the Administrative Office of the Courts in Santa Fe.

However, the judiciary's rulemaking and implementation, which includes a pilot of the PSA in Bernalillo County, was rejected by the bail industry.

The bail bonds association sued the state to halt implementation in 2017, although the case was later dismissed. Blair Dunn, an attorney for the association who was ordered to pay costs and attorney fees for filing frivolous claims, says the association is appealing to the 10th U.S. Circuit Court of Appeals at Denver.

Gerald Madrid, president of the Bail Bond Association of New Mexico, is a plaintiff in the case and is particularly critical of the risk assessment tool. He says it's too permissive and essentially allows release for everyone, which puts the public's safety at risk.

It has also hurt his bail bond business, which is based in Albuquerque. Since the reform, he laid off all 10 employees in the Albuquerque office, while his contractors in other parts of the state have scaled back operations. "It's financially destroyed the bail bond industry in New Mexico," he says.

Regardless of the hurdles placed by the bail industry, Porrino, the former New Jersey attorney general, is optimistic for the future of similar efforts. "As word starts to get out, I think you end up with a surge nationally to implement reforms a lot like the reforms being implemented here in New Jersey," he says.

This article was published in the March 2018 issue of the ABA Journal with the title "Battling Bail: The bail industry is fighting back against reforms that threaten its livelihood."

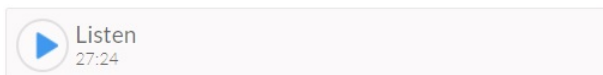


Ohio Considers Bail Reform

By MARK HEYNE • FEB 26, 2018



Ohio lawmakers are considering a bill to eliminate pre-determined bail schedules and require judges to consider a risk-based assessment in setting bail.
ALPHA STOCK IMAGES



The bail reform movement has been around for decades but is taking on new life as proposals are being introduced in a growing number of states. Ohio is one of the latest states to consider the issue, in the form of House Bill 439. Supporters say bail reform will lead to fewer defendants being held in jail simply because they can't afford to pay. Critics say the idea is good, but, as the movement has grown, there have been problems associated with it.

Joining us to talk about bail reform are [American Bail Coalition](#) Executive Director **Jeff Clayton**; CEO of the [Pretrial Justice Institute](#), **Cherise Burdeen**; and [State Representative Jonathan Dever](#) from Madeira, one of the two lawmakers who introduced Ohio's bail reform bill.

Daily Journal

Feb. 22, 2018

Bail reform efforts will costs courts bigly, both sides agree

In the wake of Attorney General Xavier Becerra's decision not to appeal a ruling that courts must take into account a defendant's ability to pay when determining bail, opponents of proposals to end bail are raising concerns about the impact that would have on already overburdened courts



In the wake of Attorney General Xavier Becerra's decision not to appeal a ruling that courts must take into account a defendant's ability to pay when determining bail, opponents of proposals to end bail are raising concerns about the impact that would have on already overburdened courts. Becerra's decision not to appeal came in a case in which the 1st District Court of Appeal decision held that a bail

amount of \$350,000 for a fourth-strike robbery defendant could be a violation of constitutional protections against excessive bail without an ability-to pay determination or consideration of non-monetary alternatives. In re Humphrey, A152056 (Cal. App. 1st Dist., filed Jan. 25, 2018).

Requiring such additional hearings for every defendant in the state would be complicated to implement and excessively resource-intensive, said Eric Siddall, vice president of the Los Angeles County Association of Deputy District Attorneys.

"It would be a major strain on judicial resources," Siddall said. "It would add extra hearings. They would have to be done quickly. The courts would have to have a service that would give them information with historical and biographical information on the defendant."

Revamping the bail system would mean more judges, Siddall said, including those that specialized in bail hearings in each courthouse, available within 48 hours of a person's arrest. "Just for a detention hearing, you would have a mini-trial, because there would be evidence brought by the prosecution and the defense, and evidence provided by a new court services agency doing their own independent evaluation."

Whatever is necessary to implement a no-bail system is what must be done, said retired Santa Barbara County Superior Court judge George C. Eskin, a member of the Chief Justice's Pretrial Detention Reform Work Group.

"Take a deep breath and listen to me recite from the Humphrey decision: 'We are not blind to the practical problems our ruling may present. The timelines within which bail determinations must be made are short, and judicial officers and pretrial service agencies are already burdened by limited resources,'" said Eskin. "... Nevertheless, the highest judicial responsibility is and must remain the enforcement of constitutional rights, a responsibility that cannot be avoided on the ground its discharge requires greater judicial resources than the other two branches of government may see fit to provide."

The only choice to those concerned about the impact of the Humphrey decision on court resources is "wrap your hands around the decision and make it work," Eskin said, "because it's our constitutional responsibility that no one should be detained because they lack the money to purchase their freedom."

Though the resources may not be there now, Eskin said, they've got to be made available, and the judiciary should be "banging the doors of the governor's office and the Legislature" to demand them.

The cost to implement such a system is approximately \$2.5 billion, according to Siddall, who said he arrived at that number by taking the amount being spent on a similar pretrial system in Washington, D.C. and scaling it up to match the population of California.

At present, defendants have a right to bail review hearings, Siddall said, yet the right is rarely exercised because "for the most part judges go with the bail schedule." He added, "Now, every case would have a full-blown hearing more detailed than a preliminary hearing. I don't know where they're going to get the judges, courthouse and facilities to do all that."

Attorney Harmeet Dhillon, who represents bail bonds companies in a separate case, agreed that ability-to-pay hearings would impose additional burdens on the courts. "This is going to lead to more court hearings. Are there judicial officers to have those hearings? In urban counties like San Francisco and Los Angeles you could scale up to add judges, but how is that going to work in smaller counties?"

Those who want to eliminate bail want to create another public sector union of risk assessors, Dhillon said, which is "a potentially unlimited cost" which even the governor has expressed concerns about.

Citing *U.S. v. Salerno* (481 U.S. 739), the model cited by Humphrey, Los Angeles County Superior Court Judge Serena Murillo, another member of the Chief Justice's Pretrial Detention Reform Work Group, differed with those who liken a preventive detention hearing to a mini-trial. "I have to find by clear and convincing evidence that the only way I can keep the public safe is by detaining this person," Murillo said. "The evidence is presented on the documents, and the only other proof that may have to be elicited is if identity is an issue. It is an amplified bail hearing which will definitely have an impact on operations, because the hearings will potentially involve more than our current bail hearings, but not rise to the level of a trial or a preliminary hearing. It is also something that federal practitioners do routinely."

One difficulty to enacting the changes required by the Humphrey decision, or the larger, ground-up changes recommended by the Chief Justice's Pretrial Detention Reform Work Group and sought in a pending bill, SB 10, would be the demands not just on judges but on court staff, said Stanford University Law Professor Robert Weisberg. That deficit, Weisberg said, goes back to the financial meltdown of 2008.

While he doesn't deny that such changes would be resource-intensive, Weisberg said that descriptions of the bail hearings as mini-trials is a "huge exaggeration" and essentially miss the central point. "Reasonable bail is a constitutional right, and you don't do cost efficiency when there's a constitutional right at stake," he said. Because pressure to change the bail system has come largely from the academic and nonprofit sectors, Weisberg said, there may also be ample opportunities for partnerships which enable counties to get free help, because there's a strong academic interest in testing risk assessment tools.

Further, Weisberg said, the finances may be more fungible than people realize, and there are ways to move money around if the government is forced to be creative.

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Does Bail Reform Work?

By Jim McCarty

October 8, 2018



©Shutterstock Image

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (Eighth Amendment)

Americans cherish their tradition of independence, a tradition that demands that government guarantee certain freedoms to its citizens. One unspoken freedom, not found in the Declaration of Independence or Constitution is “freedom from fear.” Everyone needs to feel safe in their homes and neighborhoods from those who might repeatedly criminally victimize them, even after they have been arrested and charged with a crime.

Americans also feel that people should not be placed in jail based on their ability to pay for pretrial release.

The Founding Fathers saw, and sometimes experienced, the abuses of the English system of criminal justice in the late 18th century, and sought to prevent wholesale incarceration of “presumed innocent” persons by guaranteeing a bail system for pretrial release that is not “excessive.”

This system of surety to guarantee appearance at trial seemed to have worked well until some constitutional scholars began to see the current bail system was disproportionately benefiting the rich, while the poor waited months behind bars for their day in court, simply because they are unable to pay.

Many additionally argued that jailing un-convicted persons before trial may be considered, in and of itself, to be “cruel and unusual punishment.”

New Jersey addressed this issue in January 2017 with the passage and implementation of the Bail Reform and Speedy Trial Act.

On Feb. 13, the New Jersey Administrative Office of the Courts released a report detailing highlights of the first year of Criminal Justice Reform in the state.

The report provides data on the performance of the program, from arrest through pretrial monitoring, covering its first year from Jan. 1, 2017 to Jan. 1, 2018.

After one year’s experience with the new Bail Reform and Speedy Trial Act, the state released its first “report card” to evaluate how the system was working.

The Herald reviewed the first year’s report card (N.J. Criminal Justice Reform Report) to examine New Jersey’s criminal justice reform program that seeks to accomplish the goals of guaranteeing appearance at trial by accused defendants while simultaneously protecting the public.

The local impact on Cape May County was described by County Prosecutor Jeffrey Sutherland, his First Assistant Rob Johnson, and an official with a local police agency.

History of Bail Surety, Bail Reform

The history of the cash bail system in America evolved from English common law, as did most of the nation's principles of criminal and civil justice.

The American system of bail seeks to find ways to guarantee a defendant’s appearance at trial while keeping the public safe from those who would continue to commit crimes if those offenders were not incarcerated.

The concept of freeing accused offenders, who are presumed innocent, in lieu of financial bond seemed a reasonable and effective method to avoid pretrial incarceration of large numbers of citizens without due process.

This concept, as adopted by the freedom-loving Americans of the 18th century, led to the Eighth Amendment that prohibits “excessive” bail. As always, the devil was in the details.

What is “excessive” bail? Is pretrial freedom based substantially on the person’s ability to pay money (post bonds), “cruel and unusual” punishment, as well as a violation of the due process, and equal protection clauses of the 14th Amendment?

The Bail Reform and Speedy Trial Act assesses the potential risk posed to the community by accused offenders and recommends either release with monitoring or incarceration until trial.

The approach essentially eliminates the practice of posting a bond (forcing them to pay money) to be held by the courts, until the accused completes the judicial process of adjudication for the offense charged.

New System Overview

According to the “Criminal Justice Reform Report to the Governor and the Legislature,” for 2017, “The primary purpose of Criminal Justice Reform (CJR) is to create a fairer system of pretrial justice, in which the decision to release or detain the defendant prior to trial is based on an analysis of the risk the defendant poses that applies evenly, regardless of the defendant’s finances.”

To that end, the state created a system that attempts to identify defendants who have been charged with a crime that falls within the definition of “eligible defendants,” and “transformed the process of making pretrial release decisions... by implementing electronic monitoring” and other tools to enforce the state’s speedy trial requirements.

This concept begs the question, how does the state decide who needs incarceration, and who can be safely released to the community before trial?

Pretrial Services

According to the report, the Pretrial Services Program evaluates the defendant’s risk to the public and provides a recommendation to the court, based on information gathered from a risk assessment instrument called the Public Safety Assessment (PSA).

The Decision Making Framework that emanates from the assessment process measures the likelihood that the defendant will appear in court, as well as the likelihood that he or she will repeat offend while awaiting trial.

Electronic monitoring is also an important feature of managing those who are selected to be released before trial.

The PSA referenced above specifically measures nine risk factors; it utilizes the defendant’s criminal history data to predict the risk of the person engaging in new criminal activity or failing to appear in court.

Some factors include:

- The defendant's age at the time of arrest.
- Whether the current charge is a violent offense.
- Whether the defendant has a pending charge at the time of the offense.
- Whether the defendant has a prior disorderly persons or indictable conviction.
- Whether the defendant has a prior violent conviction.
- Whether the defendant has a prior failure to appear pretrial in the past two or more years.

Measuring Success

The CJR Report provides multiple views of various metrics that seek to answer the question of the law's effectiveness.

Analysis of one year's data reveals that prosecutors in the state filed 19,366 petitions for pretrial detention.

The above-pictured chart labeled "Chart 1" provides more detail on various elements of the system, but it should be noted that out of the 19,366 petitions, the court granted only 8,043, which means that less than half of those prosecutors wanted to be detained were incarcerated.

Revenues/Costs *(source CJR Report)*

Since Nov. 17, 2014, the Judiciary has collected a total of \$130.9 million from court fees, which is the funding source for CJR.

As of Dec. 31, 2017, in accordance with the statutory requirements, the Judiciary allocated the funds as follows:

(1) \$67.4 million to the Pretrial Services Program;

(2) \$30.6 million for e-Courts;

(3) \$30.9 million to Legal Services of New Jersey;

(4) On to the discretionary account.

In the first two full fiscal years of collections, fiscal years 2016 and 2017, the Judiciary collected \$44.1 million and \$41 million, respectively.

As of the date of the report (CJR), fiscal year 2018 collections were tracking 2.4 percent below fiscal year 2017 for the same period.

The CJR report sees revenues as a major challenge.

The report acknowledges that expenses for the system “cannot be sustained” by collecting fees alone.

The report advises that there needs to be a dedicated funding source in the future to maintain the system going forward.

Other Challenges *(CJR Report)*

The state also anticipates issues regarding the ability of Pretrial Services to provide some critical services to those on pretrial release, to include drug and substance abuse programs, mental health issues, and counseling for this concept to succeed.

These vital services would help those on pretrial release to remain arrest-free until their cases are adjudicated.

The report also notes that the courts cannot always respond to non-compliant defendants (emergency alerts) as quickly as they would like to.

Less than a third of county law enforcement agencies can respond to emergency alerts 24 hours, seven days a week at this time. In these cases, pretrial services personnel would need to respond.

Impact on Jail Populations

According to the CJR report, the CJR initiative was not “specifically undertaken to reduce the county jail population,” but it seems to have, in part, reduced that number. See Chart 2.

In the first year of CJR, the pretrial jail population decreased to 5,743 defendants, a 20 percent drop. It should be noted that the jail population was already showing a decline based on other factors, prior to the implementation of CJR.

According to Cape May County Prosecutor Jeffrey Sutherland, the statewide rate of decline in jail population is consistent with his findings for Cape May County.

His analysis of Cape May County jail trends since the implementation of the new system indicates an 18 percent inmate population decrease in the county from January 2017 to January 2018.

First Assistant Prosecutor Rob Johnson, who served as acting Cape May County prosecutor on the retirement of former prosecutor Robert Taylor, acknowledged that the county jail population had begun to shrink before the new implementation, based on a variety of factors including crime rate fluctuations, demographic trends, and other CJR initiatives.

“There is not enough data at this time” to say the decline is based solely on the new system” Johnson added.

Johnson further acknowledged that since the new system was implemented, 52 additional defendants failed to appear for a court date during 2017 than had failed to appear the year before, a notable increase.

Impact on Pretrial Services and County Criminal Justice Resources

Sutherland spoke about the financial impact this system has had on local criminal justice resources.

“The new system has placed significant strain on manpower in order to comply with their responsibility to complete 'discovery packages' in time for the courts to make their decision regarding detention or release.”

Sutherland noted that police and prosecutors must assemble all relevant materials used to prosecute a defendant prior to trial as part of the rules of criminal procedure.

That package is provided to defense counsel and the court, and in the case of pretrial release decisions, the package is used as part of the assessment made by the court regarding the defendant’s eligibility for release.

The shorter timeline to complete the package (within 48 to 72 hours), has placed additional financial burdens on all members of the criminal justice system, according to Sutherland.

Sutherland and Johnson also stated that although electronic monitoring may be used on certain defendants, there are not enough monitors or response personnel available to use that technology in all cases of pretrial release.

Normally, only defendants that pose some risk to crime victims are monitored with that technology.

Johnson addressed the risk assessment used by the courts to make detention decisions as a “good idea,” but suggested that when a prosecutor files a petition to detain a defendant, there is good reason to believe that detention is necessary in that case.

He noted less than 50 percent of all petitions to incarcerate filed statewide and in Cape May County were granted by the court. Johnson understands that judges are required to use the PSA (assessment) to make decisions, but he feels other factors and exceptions should have more weight.

“It’s a good system, but it’s not perfect,” he added.

Both Sutherland and Johnson also regret that many human services such as drug/alcohol treatment and mental health treatment services are unavailable to those who are released as part of the system and that persons who suffer from such conditions are more likely to repeat offend and fail to appear for their next court date.

Policing Issues: Are We Safer?

The Herald contacted Lower Township Police Executive Officer Capt. Martin Biersbach to determine what impact, if any, the Criminal Justice Reform program has had on one of the largest police agencies in the county.

Biersbach stated that the new system has not yet provided enough statistical insights to make a determination as to the effectiveness of the system, or the impact it may have had on crime and recidivism rates in Lower Township.

He acknowledged that the requirement to have their complete case file completed within the 48-hour window had placed increased pressure on police to ensure all elements of discovery, including any videotapes and other documents, must be available to the judge who makes the decision as to bail or release.

He stated that officers must spend more time off the street to complete reports and organize discovery packages to meet the 48-hour deadline they have to complete these tasks. Biersbach noted that there are increased costs associated with this new process in overtime to ensure that the package is complete in time, as well as decreased patrol time on the street.

Another Point of View

The American Bail Coalition is a trade organization “dedicated to the long-term growth and sustainability of the surety bail industry.” Elliott Chang, a spokesperson for the group, provided the coalition’s position on the issue of surety bail, versus pretrial release based on risk assessments.

In a letter, Chang argued that the bail surety system is effective and that studies show that regarding the pretrial release issue, “surety bail outperforms all others.”

Chang also argued that the bail-bond system currently costs the community nothing, and further argued that those assessments that are used to make detention decisions

often contain no “proper safeguards” and some systems do not even require personal interview with the offender before a decision is made.

To learn more about the Criminal Justice Reform initiative, the entire report for 2017 from the state may be found [here](#).

To contact Jim McCarty, email jmccarty@cmcherald.com.



Bail industry battles reforms that threaten its livelihood

By Jason Tashia

Source: [ABAJournal.com](https://www.abajournal.com)

A little more than a year ago, New Jersey all but eliminated cash bail for criminal defendants, except for those charged with certain violent offenses.

Since the reforms took effect January 1, 2017, the county jail population is down 16 percent, says then-attorney general Christopher Porrino, who left office on January 16, when the new governor was sworn in. And preliminary numbers show a 5 percent decrease in violent crime over the year.

The reforms, Porrino says, address two problems: First, that violent repeat offenders were often able to buy their way out of jail; and second, that low-level, nonviolent offenders often languished in jail because they didn't have the means to post bail.

Now, instead of needing money to attain freedom, which disproportionately punished poor and minority people, defendants are held or released because of their risk to society. "This is one of the best examples of where government can work," Porrino says.

Determining who is held in jail and released is done, in part, through an algorithm called a risk assessment, a program being challenged by the bail industry, whose financial future is increasingly threatened. Although reformers say risk assessments decrease crime rates, reduce jail populations and increase government savings, the bail bond industry sees a permissive tool that is bad for public safety and an existential threat.

"Pretrial assessment represents a quantum step forward over the current subjective—and too often biased—decision-making," says Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, a policy group in Rockville, Maryland, and co-chair of the ABA Pretrial Justice Committee.

In the most basic sense, a risk assessment takes a series of factors about an individual facing detention and provides an output, such as the likeliness that the person will show up to court or commit another crime.

While there are numerous risk assessment methods, one of the fastest proliferating tools is the Laura and John Arnold Foundation's Public Safety Assessment, or PSA, which has been piloted in about 40 jurisdictions, including New Jersey.

Jeff Clayton, executive director of the American Bail Coalition, says risk assessments originally "were one more tool in the toolbox" that a judge could use to set bail. Although he has concerns regarding the underlying research and data that led to the creation of the PSA, he now describes the algorithm as a mechanism "to completely get rid of bail."

A NATION LOCKED UP

Every year about 12 million Americans are booked into local jails. The Pretrial Justice Institute says about three out of five inmates are awaiting trial, costing taxpayers about \$14 billion per year.

For judges, as a paper from the Arnold Foundation notes, the “decision—whether to release or detain a defendant—is far too important to be left to chance.” The foundation determined a data-informed risk assessment was the way to close this subjectivity gap.

Tools such as risk assessments are seen as a complement to implementing bail reform. In their absence, limiting cash bail can have mixed results. In Maryland, for example, a new judicial rule states that money bail should be used as a last resort. However, this led to only a slight increase of those being released in Baltimore, about 8 percent, and an increase of more than 140 percent of those held pretrial without bond, says Zina Makar, co-director of the Pretrial Justice Clinic at the University of Baltimore law school.

She says risk assessment tools—alongside services such as counseling—can improve the decision-making process and give judges the comfort to release people pretrial. But the bail industry isn’t convinced risk assessments work.

In New Jersey, the Arnold Foundation is a named defendant, alongside Porrino and then-Gov. Chris Christie, in a wrongful death suit that also seeks to halt the use of the PSA. The complaint alleges that Christian Rodgers, 26, was fatally shot by a man released under the risk assessment regime. He had been arrested on weapons charges before his release.

Rodgers’ mother argued in her complaint that because of the PSA, “throngs of violent criminals were released into the streets of New Jersey’s neighborhoods.” The complaint argues that the PSA’s formula undervalues certain cases that involve the unlawful possession of a firearm. (The case is being backed by Duane Chapman, a reality television personality also known as “Dog the Bounty Hunter” who chases bail skippers across the country.)

After Rodgers’ killing, the attorney general’s office released guidelines, which include the presumption that prosecutors will seek to hold people in pretrial detention on firearm possession charges (among other violent crimes).

While the lawsuit is pending, the Arnold Foundation is researching the impact of its risk assessment system and how it can be improved as it is rolled out to other jurisdictions, says Matt Alsdorf, president of Pretrial Advisors and previously vice president of criminal justice at the Arnold Foundation.

Although curtailing cash bail is a current topic in the states, the federal system rejected this approach in 1966 and tailored release decisions to the risk posed by the defendant. For Brett Tolman, a former U.S. attorney for Utah, his experience in the federal system bolsters his support of bail reform.

“I got to see how that worked,” Tolman says of the federal risk-based system. He says it was not perfect but thinks the current system is broken and being held hostage by the bail industry.

Not yet to the point of litigation, rules were proposed by the Judiciary Courts of the State of Utah that would move toward a risk-based system and a pilot of the PSA. But the legislature asked the courts to hold off after the industry intervened.

This hurdle has the potential to be a brutal fight. “If it sounds too good to be true, then probably it is,” said Wayne Carlos, president of the Utah Association of Professional Bondsmen and Agents, during a legislative hearing in September. “What is the real reason why the courts are trying to push this program? Let’s find out before it’s too late.”

Tolman says the bail industry used “misinformation and fear tactics” to get the Utah legislature to intervene after the legislative auditor general called for bail reform and the adoption of a risk assessment tool in 2017

With a temporary victory for the industry, the courts are in a “wait-and-see sort of approach,” says Geoffrey Fattah, spokesman for the Utah state courts.

To the southeast, New Mexico’s bail reform advocates successfully passed a state constitutional amendment in 2016 to decrease the state’s reliance on cash bail while keeping it as a limited option, says Artie Pepin, director of the Administrative Office of the Courts in Santa Fe.

However, the judiciary’s rulemaking and implementation, which includes a pilot of the PSA in Bernalillo County, was rejected by the bail industry.

The bail bonds association sued the state to halt implementation in 2017, although the case was later dismissed. Blair Dunn, an attorney for the association who was ordered to pay costs and attorney fees for filing frivolous claims, says the association is appealing to the 10th U.S. Circuit Court of Appeals at Denver.

Gerald Madrid, president of the Bail Bond Association of New Mexico, is a plaintiff in the case and is particularly critical of the risk assessment tool. He says it’s too permissive and essentially allows release for everyone, which puts the public’s safety at risk.

It has also hurt his bail bond business, which is based in Albuquerque. Since the reform, he laid off all 10 employees in the Albuquerque office, while his contractors in other parts of the state have scaled back operations. “It’s financially destroyed the bail bond industry in New Mexico,” he says.

Regardless of the hurdles placed by the bail industry, Porrino, the former New Jersey attorney general, is optimistic for the future of similar efforts. “As word starts to get out, I think you end up with a surge nationally to implement reforms a lot like the reforms being implemented here in New Jersey,” he says.

Dayton Daily News

Bondsmen oppose effort to move Ohio away from cash bail system



[Laura A. Bischoff](#) - Columbus Bureau
Wednesday, March 21, 2018 [News](#)



Columbus – Bail bondsmen came out swinging against legislation that would push Ohio courts away from using the current cash bail system in favor of assessing the risk each defendant poses to public safety or as a flight risk.

“I think this legislation is a big mistake,” said Theodore Owens, a former Columbus police detective who tracks down fugitives for bond companies.

Jeff Clayton of the American Bail Coalition said risk assessment tools don’t work and have been rejected by other states.

The ACLU of Ohio, Buckeye Institute, Justice Action Network and Ohio Supreme Court Chief Justice Maureen O’Connor are pushing for sweeping changes to how Ohio courts set bail for defendants, who have yet to have their day in court. Bail has two purposes: make sure the accused show up for court and to protect the public from harm.

Roughly 57 percent of inmates in Ohio jails are not there serving a sentence but instead are awaiting trial, according to the Ohio Department of Rehabilitation and Correction data. Ohio courts should look at risk factors, not bank accounts, when deciding who goes free on bail and who stays locked up, according to advocates for bail reform.

House Bill 439 would let courts impose conditions instead of setting a monetary bail to make sure the accused shows up in court; require courts to use a risk assessment tool before setting bail; and wipe out cash schedules for setting bail. It would also require courts to collect data.

The Ohio Prosecuting Attorneys Association and Ohio Judicial Conference expressed concern that the proposed changes would require more staffing and resources — and urged lawmakers to fully fund any new mandates.

A 34-member study group led by the Ohio Criminal Sentencing Commission in June 2017 recommended reforms to the state’s pre-trial system, including cutting back on the

reliance on money bail and improving data collection. House Bill 439 reflects some of that committee's recommendations.

Charles Miller of the Ohio Bail Agents Association said using a risk tool relies on the accused's criminal history, not the current crime.

"With this legislation we're creating a catch-me-if-you-can scenario in Ohio and it's entirely unnecessary," he warned lawmakers.



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Bail Reform and Risk Assessments: Solution to Mass Incarceration and Reduction of Crime or Smokescreen for Status Quo?

By Jeffrey J. Clayton, Executive Director, American Bail Coalition

Around our nation, there have been repeated and continuing calls for bail reform. The general argument is that there are simply too many people being incarcerated. The reason, it is purported, is they cannot afford their bail and are, thus, required to wait in jail until disposition of their case.

The alternatives being sold to this alleged problem by the people behind the movement are (1) eliminate monetary bail, as has been done in New Jersey, Washington, D.C., and the federal system, by expanding preventative detention without bail based on *risk*, and then turning everyone else loose; and (2) use risk-assessments to identify those in jail who are low-risk and, therefore, eligible to be released on a promise to appear.

Reformers argue that because we already use preventative detention under certain circumstances, we can use risk assessment tools to keep the “right” rather than the “wrong” persons in jail. Of course, implicit in this approach is the assumption that the current number of persons being held is far too high. Putting it another way, they feel that the criteria for being held in jail should be based not on the lack of funds in one’s bank account, but rather, on the risk presented to society of committing a new crime or failing to appear in court as required.

Like most other policy reforms, which typically spring forth from political movements, bail reform emerged from a morph of concerns over post-conviction debtors’ prison issues and a desire to fight mass incarceration in the United States. These reforms have since worked their way into numerous state-specific constitutions, statutes, court rules, and local and statewide directives.

The current “third generation of bail reform,” as prominent reformer Tim Schnake dubbed it, really gained significant momentum in 2013 (Schnake, Brooker & Jones, 2011).. It culminated in the 2014 passage of New Jersey’s then-new risk-based bail reform law, which took effect last year on January 1. Other states and local governments, while not entirely abolishing bail in favor of a no-money bail system, began to embrace risk assessment tools, not only as a means to predict risk for bail, but also for purposes of sentencing, parole and probation. In keeping with the evidence-based practices movement, it is important to note that risk assessments are supposed to save money in incarceration costs, which can then be re-invested into alternative programs to improve the criminal justice system.

As much as the current risk assessment tools have been touted by their advocates, exactly what do they actually encompass? Some have described risk assessment as utilizing some form of artificial intelligence, but that is far from reality. Despite strong suggestions that they are able to predict the behavior of specific defendants, in actuality. The current risk assessment tools are incapable of achieving this feat. In truth, these rather unsophisticated basic tools have been in existence in one form or another for a generation. Notably, they underpinned the risk-based no-money system created by the Federal Bail Reform Act of 1984.

Risk assessment tools supposedly work by grouping persons into various risk categories. However, once separated, they are unable to distinguish between persons within a particular risk category. Nor do they even try. Rather, most assessments create a list of categories, typically ranging from low to high-risk and numerous categories in between.

Regression analysis is used to determine the factors that will be evaluated and scored in order to then place persons into the various risk categories. For example, most risk assessments use factors like prior criminality, which make up a large percentage of a score. Some use demographic factors, although there has been widespread criticism of their use due to concerns over discriminatory impacts.

The Public Safety Assessment tool created by the Laura and John Arnold Foundation is designed around a risk score ranging from one to six, with six being the highest (Brauneis & Goodman, 2017). It is important to note that the term “risk” in this context is arbitrary, as are the respective risk categories. Here, risk is defined typically as the possibility of failure while released from jail. That is, risk is the likelihood of the individual committing a new crime while on bail or failing to appear in court as required. However, the tolerances of the risk categories are not scientific. Rather, they are based on value judgements in regard to how many crimes or failures-to-appear-while-on-bail are tolerable within a particular jurisdiction. In other words, it leaves it to those using the risk assessment tool to “make it up as they go along.”

In a study published in the Yale Journal of Law & Technology last August, researchers Robert Brauneis and Ellen P. Goodman (2017) exposed a portion of the otherwise secret methodology of the Arnold Foundation’s tool and determined that persons considered high-risk would fail 40 percent of the time. The percentages for the six categories lined up as follows: one (10 percent), two (15 percent), three (20 percent), four (31 percent), five (35 percent) and six (40 percent). Thus, someone categorized as medium-risk

would have between a 20 and 31 percent chance of failing to appear or committing a new crime while on bail (Brauneis & Goodman, 2017).

The second algorithm of the Arnold Foundation tool is the “decision-making framework” -- a grid that provides release recommendations based on the risk score that has been determined. Risk level six is the most significant because the tool recommends incarceration of every defendant in that category when the state has detention with no bail. This is highly problematic from the perspective of individual liberty because -- by virtue of their own evaluation -- six out of ten persons in this category will, in fact, not commit a new crime or fail to appear. By using the Arnold Foundation tool, all persons in its high-risk category are being treated as if they *all* will commit a new crime or fail to appear, even though we know a majority will not (Brauneis & Goodman, 2017).

The most disturbing aspect of all this is that we are making decisions about individuals based on the average rate of failure of other persons similarly categorized -- not on the particular defendant him or herself.

Neither the Arnold Foundation tool nor any other in existence are actually able to predict within a risk category. They do not even attempt to do so, since there are no other factors left to consider that have not already been included in the evaluation.

It is important to understand what actually happens when monetary bail is eliminated from a jurisdiction. Prosecutors and judges can either detain or release on non-monetary conditions. In New Jersey, that is certainly occurring, and is based on the results of the Arnold Foundation risk assessment. Since the law was implemented in that state, a motion for preventative detention has been filed in 43.6 percent of all cases, resulting in the actual detention in approximately 19 percent of them (New Jersey Judiciary, 2017). Of course, the disparities in preventative detention across individual New Jersey jurisdictions are large, with one detaining 33 percent of all defendants without bail.

So the question is, did the tool get it right in each case or even in general? The answer is, we don't know. It is impossible to determine if the people sitting in jail, because they were labeled dangerous, are the six out of 10 who would have been crime-free and shown up to court, or whether they are the four out of 10 who would have committed a new crime or failed to appear.

Notwithstanding the complications of preventative detention, there is considerable evidence to support the premise that risk assessments fail to have any impact on the ultimate tri-partite outcomes of reducing incarceration, reducing new crimes while on bail and reducing failures to appear in court.

Kentucky implemented the Arnold Foundation Public Safety Assessment in 2013. In a study of the state's legal system released this past December, Professor Megan Stevenson (2017) of George Mason University School of Law obtained several years' worth of data to validate the claims, not only of the success of the Kentucky implementation, but of other risk assessments around the country.

Stevenson indicated that she embarked upon the research because, “virtually nothing is known about how the implementation of risk assessment affects key outcomes: incarceration rates, crime, misconduct, or racial disparities” (Stevenson, 2017, p. 2). She sought the answer to a simple question -- did the assessments deliver on their promises? Examining Kentucky and beyond, Stevenson's findings determined that the reduction in the jail population was “trivial” (Stevenson, 2017, p.5) and that “failures-to-appear and pretrial crime increased as well” (Stevenson, 2017, p.1).

While she did not dismiss the potential for risk assessments to produce benefits, she did say “it will take research and experimentation to learn how to achieve them” (Stevenson, 2017, p.1). She further added there is a need for a real process to assess these tools “not a flocking towards methods that bear the glossy veneer of science, but a careful and iterative evaluation of what works and what does not” (Stevenson, 2017, p.1).

Other recent research calls into question whether or not risk assessments can do a better job of predicting than untrained human beings. In January of this year, the peer-reviewed scientific journal, *Science Advances*, published a study from software engineer Julia Dressel and Dartmouth computer science professor Hany Farid (Dressell & Farid, 2018). They looked at the results of two widely-used proprietary algorithms to predict recidivism, comparing them to the predictions made by people responding to an on-line survey with no training at all in the criminal justice system. Their conclusion? “We have shown that commercial software that is widely used to predict recidivism is no more accurate or fair than the predictions of people with little to no criminal justice expertise who responded to an online survey” (Dressell & Farid, 2018, p. 2). Also, despite the oft-repeated claims made by proprietors of risk assessment algorithms, it was clear from the study that the algorithms did nothing to reduce racial disparities.

Many other serious concerns with risk assessments abound, but they fall outside the purview of this article. They lie mostly in the realm of concern regarding transparency of the assessments, how validation occurs and who validates such assessments, and whether the assessments are race- and gender-neutral. Regardless of where one comes down on the use of financial conditions of bail, the ultimate questions remain: do computers help us better predict who will commit a crime or fail to appear? Or are they

simply a smokescreen that validates the moral and policy judgments of those who help put them together? Based on critical evaluation of the evidence, it is impossible to conclude it is anything but the latter.

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About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as a licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

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N.J. lawmaker wants to roll back criminal justice changes, bring back cash bail

By [Joe Hernandez](#) • March 27, 2018



New Jersey Assemblyman John McKeon, D-Essex, proposes returning to judges the power to set monetary bail amounts for any criminal defendants. (AP Photo/Julio Cortez)

A New Jersey lawmaker wants to make it easier for judges to set cash bail for criminal defendants, a move activists say would significantly roll back last year's criminal justice overhaul, which has been lauded as a national model of reform.

In his Restoring Judicial Discretion in Bail Setting Act, Assemblyman John McKeon, D-Essex, proposed returning to judges the power to require monetary bail amounts for any criminal defendants.

Under the overhaul that took effect in January of last year, judges stopped setting cash bail for all defendants; instead, they began either releasing defendants until trial or holding them in jail.

Judges could only require monetary bail after they decided that no other conditions (such as reporting to a court officer or home detention) would prevent a defendant from skipping a future court date. Now, cash bail is a rarity, with judges issuing it to only 44 defendants in 2017.

McKeon did not respond to several requests for comment.

But according to the text of the bill, he said the subversion of cash bail has meant that “judges have no other option in the current system but to blanket defendants with correction technology, intense supervision by local governments, and other liberty-restricting conditions.”

That has caused, according to the bill, a “financial burden on local governments.”

“Our argument has been they need the option of bail to alleviate the [financial] pressure,” said Jeff Clayton, executive director of the American Bail Coalition.

Clayton pointed out that the state has already claimed it is running out of money to fund the criminal justice overhaul, which requires funding to staff a new pretrial services unit and pay for GPS tracking and other technology.

The state would be better off, Clayton said, outsourcing the role of monitoring defendants to bail bond agents. “Otherwise they’re gonna get a big budget request,” he said.

But supporters of scrapping cash bail and switching to a risk-based system criticized what they saw as an attempt to resurrect the old model.

“What this bill is is a call for a return to the previous status quo,” said Alex Shalom, a senior staff attorney at the ACLU-NJ.

Shalom predicted that, if cash bail again became a mainstay of the criminal justice system in New Jersey, judges would revert to issuing it to poor defendants who would be unable to pay. The state moved away from monetary bail, in part, due to the overwhelming number of low-income defendants stuck behind bars simply because they could not afford their bail.

Clayton acknowledged the possibility that some poor defendants may suffer if cash bail returned, but he predicted that judges would most likely use it for high-risk defendants who would otherwise be detained or released with significant conditions.

McKeon proposed another bill that would have made it possible for judges to offer money bail to all but the most serious offenders.

But Shalom maintained that bringing back cash bail in any significant way — without any checks on how judges could deploy it — would spell a return to an outdated system in which thousands of defendants awaited trial behind bars because they were not flush enough to pay for their release.

“I don’t understand, knowing what we know about what a failure the old system was,” Shalom said, “why anyone would want us to return to a system that we know had failed us for so long.”

The New York Times

When Bail Feels Less Like Freedom, More Like Extortion

As bail has grown into a \$2 billion industry, bond agents have become the payday lenders of the criminal justice world, offering quick relief to desperate customers at high prices.

By JESSICA SILVER-GREENBERG and SHAILA DEWAN MARCH 31, 2018



Most bail bond agents make it their business to get their clients to court. But when Ronald Egana showed up at the criminal courthouse in New Orleans, he was surprised to find that his bondsman wanted to stop him.

A bounty hunter was waiting at the courthouse metal detector to intercept Mr. Egana and haul him to the bond company office, he said. The reason: The bondsman wanted to get paid.

Mr. Egana ended up in handcuffs, missing his court appearance while the agency got his mother on the phone and demanded more than \$1,500 in overdue payments, according to a lawsuit. It was not the first time Mr. Egana had been held captive by the bond company, he said, nor would it be the last. Each time, his friends or family was forced to pay more to get him released, he said.

As commercial bail has grown into a \$2 billion industry, bond agents have become the payday lenders of the criminal justice world, offering quick relief to desperate customers at high prices. When clients like Mr. Egana cannot afford to pay the bond company's fee to get them out, bond agents simply loan them the money, allowing them to go on a payment plan.

But bondsmen have extraordinary powers that most lenders do not. They are supposed to return their clients to jail if they skip court or do something illegal. But some states give them broad latitude to arrest their clients for any reason — or none at all. A credit card company cannot jail someone for missing a payment. A bondsman, in many instances, can.

Using that leverage, bond agents can charge steep fees, some of which are illegal, with impunity, according to interviews and a review of court records and complaint data. They can also go far beyond the demands of other creditors by requiring their clients to check in regularly, keep a curfew, allow searches of their car or home at any time, and open their medical, Social Security and phone records to inspection.

They keep a close eye on their clients, but in many places, no one is keeping a close eye on them.

“It’s a consumer protection issue,” said Judge Lee V. Coffee, a criminal court judge in Memphis. Before recent changes to the rules there, he said, defendants frequently complained of shakedowns in which bondsmen demanded extra payments. “They’re living under a constant daily threat that ‘if you don’t bring more money, we’re going to put you in jail.’” The pressure, the judge said, “would actually encourage people to go out and commit more crimes.”

Unlike payday lenders, the bail bond industry deals with potential criminals whose very involvement with the law raises questions about their trustworthiness. But in the United States criminal justice system, the Supreme Court has affirmed, liberty before trial is supposed to be the norm, not the exception — the system is intended to allow defendants to stay out of jail.

Some bail bond practices have drawn the ire of judges who complain that payment plans are too lenient on people accused of serious crimes, allowing them to get out for just a few hundred dollars or even no money down. Those judges say it should be more difficult for the accused to walk free.

Other judges see some bondsmen as trampling the rights of defendants. One judge in Lafayette, La., Jules Edwards III, held in contempt two bondsmen who were brothers for intercepting a defendant on his way to court and sending him, instead, to jail.

The judge said the commercial bail industry had put its financial interests above justice and public safety. “If he’s not in compliance with the contract, sue him. How do you get to snatch his body and hold him hostage?” Judge Edwards said in a phone interview.

He added that defendants do not have to go with their bondsmen unless there is a warrant out for their arrest, but many of them do not know that. “What they’re doing is intimidating and coercing and lying,” he said. The brothers declined to comment.

In both Mr. Egana’s case and this one, the bondsmen would not have been on the hook for the defendants’ failure to appear, because they diverted the defendants from court dates for unrelated cases, not the ones for which they had bailed them out.

The bond agency, Blair’s Bail Bonds, stopped Mr. Egana, who had prior felony convictions, from going to court on charges of fleeing an officer, but had bailed him out in June 2016 after he was arrested on charges of possession of marijuana, a firearm and stolen property.

Had Mr. Egana been wealthier, he might have been able to post his full bail of \$26,000, then gotten it back when he returned for court. But like most defendants, Mr. Egana had to turn to a commercial bail bond agent that charges a nonrefundable fee for the service of guaranteeing the bond.

Not only could Mr. Egana not afford the full bail, he could not afford the fee, \$3,275. He arranged to pay it in installments. After his release, he said, Blair’s informed him that on top of the premium, he would have to pay \$10 a day for an ankle monitor, though the judge had not ordered one. Guilty or innocent, Mr. Egana would never see any of that money again. Blair’s has denied any wrongdoing in the matter.

Some customers feel they have no choice but to pay bond agents’ fees — no matter how outrageous they seem. When a home health care aide wanted to bail her son out of Rikers Island in New York City, she was charged \$1,000 to have a courier walk her money a few blocks to the courthouse.

A defendant in a serious domestic violence case in Santa Clara, Calif., suffering from a dangerous heart condition, had to have his ankle monitor removed each time he went to the hospital, and was forced to pay \$300 to have it put back on afterward.

A woman in Des Moines woke one morning to find that her 2001 Pontiac Grand Prix had been repossessed during the night. Had she put up her car as collateral in a typical loan, she would have been notified that she had fallen behind and given 20 days to pay.

But instead, the car was collateral for a bail bond for her child’s father. She owed \$700 to the bail agents. They not only took the car, but turned the father over to the jail. Ultimately the misdemeanor assault charges against him were dismissed.

The bond agents in the Lafayette, New York, Santa Clara and Des Moines cases declined to comment. But Jeffrey J. Clayton, the executive director of the American Bail Coalition, an industry group, said that credit bonds, as the payment plans are called, should be more tightly regulated and require at least a minimum down payment. However, he said, any rules should preserve the benefit to the customer, namely, “If you have the ability to pay it, just not right now, you can get out right now.”

Bond companies fall into a sort of regulatory gulf between criminal courts and state insurance departments, which are supposed to regulate them but seldom impose sanctions. With rare exception, defense lawyers and prosecutors are too busy with their caseloads to keep bond companies in line. Further complicating things, it is often unclear whether consumer protection laws apply, and insurance departments say they lack the resources to investigate complaints.

In the case of Mr. Egana, who worked as a carpenter, it did not take long for him to fall behind on his payments. But he thought that since he was routinely showing up to court, he would be fine.

He was wrong. The bond company detained him several more times, according to court records. At one point, two men with guns and bulletproof vests came to the home where he was working as a contractor and forced him into a car. Each time, they demanded that his mother pay more money.

Jeffrey Orey, a spokesman for Blair’s Bail Bonds, while denying any wrongdoing, declined to comment on the specifics of Mr. Egana’s lawsuit. He said the company had never charged interest or assessed penalties for late payment. The lawsuit, brought by the Southern Poverty Law Center on behalf of Mr. Egana and alleging violation of consumer lending laws, says Mr. Egana’s mother paid at least \$5,450 — or almost two times the original premium — to keep her son out of jail. Some of her money, the lawsuit says, was applied to older debts that Mr. Egana still owed.

“It was kidnapping,” Mr. Egana said. “They saw the love that my mom has for me, and they used that to their advantage.”

In May, Blair’s decided it no longer wanted Mr. Egana as a customer and handed him over to the jail.

Siphoning Millions From Poor



An advertisement for a bail bonds business in New Orleans. In 2015, 63 percent of misdemeanor defendants and 87 percent of felony defendants in the city had to pay bond as a condition of release before trial, according to a study by the Vera Institute of Justice, a nonprofit.
William Widmer for The New York Times

The use of bail bonds has come under attack in recent years because it keeps the poorest, rather than the most dangerous, defendants behind bars.

State after state has taken steps to reduce or eliminate the practice of making that freedom contingent on money. In response, the bond industry has worked to undermine reforms and regulations, arguing that commercial bail is still the most efficient and taxpayer-friendly way to keep the public safe and the courts running smoothly.

The bond agent takes a fee in exchange for guaranteeing the amount of the bail on the defendant's behalf. But the fee — or premium — usually about 10 percent, is too high for many defendants, the vast majority of whom are poor. So they arrange a payment plan. The debt, paid over weeks or months of installments, can outlast the criminal case.

The arrangement can include steep late fees or require signing over collateral worth many times what is owed. And while defendants, or the family members and friends who often shoulder the costs, typically pay no interest as long as their payments are on time, if they go into default they can trigger annual interest rates as high as 30 percent.

The use of financial conditions for bail has not always been as widespread as it is today. In 1990, only 24 percent of those released from jail before trial were required to pay. That number soared to almost 50 percent in 2009, the most recent year for which

national figures are available. In some jurisdictions, the number is far higher: In New Orleans in 2015, 63 percent of misdemeanor defendants and 87 percent of felony defendants had to pay to be released before trial, according to [a study by the Vera Institute of Justice](#), a nonprofit that seeks to improve the criminal justice system.

Commercial bail fees, often scraped together by multiple family members, siphon millions from poor, predominantly African-American and Hispanic communities. Over a five-year span, Maryland families paid more than \$256 million in nonrefundable bail premiums, according to [a report by the state's Office of the Public Defender](#). More than \$75 million of that was paid in cases resolved with no finding of guilt, and the vast majority of it was paid by black families.

In 2015, New Orleans families paid \$6.4 million in premiums and fees, the Vera Institute of Justice found. In New York City last year, bond companies collected between \$16 million and \$27 million, “a sizable transfer of wealth,” [noted Scott Stringer, the city comptroller](#), “to the pockets of opportunistic bail bond agents.”

The poor pay more than the rich: Some bond agencies offer lower rates to those who are union members, hire their own lawyer rather than use a court-appointed one, or put up more valuable collateral.

The entire premise on which the commercial bail system is built — that when defendants skip bail, someone must either find them or pay, is somewhat illusory.

The image of the industry, encapsulated by Dog the Bounty Hunter chasing down outlaws on television, is one of danger and high stakes.

But in most cases where defendants miss court, a bond agent may not have to do anything. Many states allow months for a defendant to be found. In Texas, bond agents have nine months before a felony bail is forfeited. In Colorado, according to the American Bail Coalition, even after a bond is paid, the agent has two years to find the missing defendant and get the money back.

With so much time, many defendants will resurface on their own, or be caught during a traffic stop or other law enforcement interaction, without any effort on the bond agent's part.

In a report last year, government auditors in Utah [criticized the long grace periods](#), saying that more than 70 percent of defendants who skip court show up within a month. Over the course of a year, the auditors found, less than 2 percent of bonds were forfeited.

“If you're not holding bond companies accountable at every turn, they can wriggle out of a forfeiture,” said Alison Filo, a prosecutor in Santa Clara, Calif., where the district attorney's office has begun in recent years to pursue payments from bond agents. Ms. Filo said there were some counties in her state where forfeitures were never collected.

The system, though, has worked well for the industry, even attracting private equity investors. Mom-and-pop bail companies are backed by large surety companies, which guarantee the full amount of the bond in exchange for a portion of the premium.

Together, the surety companies and the bail bond agents collect about \$2 billion a year in revenue, according to [an analysis](#) by Color of Change, a nonprofit focused on racial justice, and the American Civil Liberties Union. “Bail insurers have shaped the entire industry, as well as the laws they operate under, to safeguard their profits at the expense of people’s lives,” said Rashad Robinson, the executive director of Color of Change.

While most insurance companies expect losses of up to 50 percent, one surety company, Continental Heritage of Florida, had no losses in its bail division for almost two decades. And an industry giant, AIA Bail Bond Insurance Company, said it underwrote more than \$800 billion in bonds in 2016. Its losses: zero.

Extortion, Theft and Kidnapping



Gregory Chiotti's home in Los Altos, Calif. On paper, California's bail laws have strong consumer protections, but regulators have grown frustrated with complaints.

Jason Henry for The New York Times

In Santa Clara County, Gregory Chiotti's daughter had already been convicted and gone to jail when he got a bill from Jake's Bail Bonds for \$39,755, along with a notice of foreclosure on his house, which he had put up as collateral on her bond.

On paper, California's bail laws have strong consumer protections, but regulators have grown so frustrated with complaints that they have repeatedly asked lawmakers for more money to police the industry.

Under California law, Mr. Chiotti could be charged only the premium for his daughter's bond — \$5,000 — plus any “actual, reasonable and necessary” expenses incurred by Jake's.

But Jake's claimed that Mr. Chiotti owed something called a “recovery cost percentage” of \$19,500 and \$4,425 for unspecified “equipment,” among other fees, according to an investigative report. To prevent the sale of his house, Mr. Chiotti, then 69, cashed out savings and forked over nearly \$40,000.

He thought that was the end of the matter, but Jake's never released the lien on his property. Six years later, in 2015, he got a second notice of foreclosure. This time the bondsman, Jacob Garcia Peters, said he owed \$117,500.

At the time, Santa Clara County had begun a rare effort to prosecute unscrupulous bondsmen, and Mr. Peters was charged with attempted extortion. During the investigation, court records show, Mr. Peters acknowledged that the bonds had been cleared by the court and he had never been required to pay. But according to the file, Mr. Peters said the daughter, who had missed at least one court appearance, had “breached the contract,” so Mr. Chiotti was liable for the money anyway.

Though California law appears to be quite clear about what bond agents can charge, a review of more than 100 bail contracts and legal documents by the criminal justice reform clinic at the University of California, Los Angeles, School of Law found that [such protections were routinely ignored](#). The contracts included all manner of additional costs, including late fees, interest on delinquent balances and “renewal premiums” that required the defendant to pay again to stay out of jail if the case was not resolved within a year.

Unlike in most states, bondsmen in California must return the premium to customers if they surrender them to jail, unless they can demonstrate that their risk level substantially increased. A new arrest for a lesser crime does not constitute increased risk, the law says. But one contract said that if the defendant moved without prior written notice or was arrested for any new offense, his premium would not be repaid. In another, defendants could be returned to jail without a refund if they did “anything to suggest that they might forfeit the bond.”

California contracts are hardly outliers. Until recently, Maryland bond contracts allowed an automatic financial judgment against a client if the bondsman claimed they had missed a payment. Such provisions, known as “confession of judgment” clauses, are typically forbidden in consumer contracts because they are considered unfair and deprive borrowers of the chance to contest the debt. Under a Beaumont, Tex., contract, one late payment could mean jail.

In New Orleans, the Southern Poverty Law Center has complained to state regulators that bondsmen routinely charge more than is allowed by law. In phone calls placed by The New York Times, several bail bond companies quoted prices that exceeded what is allowable under state law by a few hundred dollars. When asked, they said the extra money was a “lock-up fee” paid to the jail. But there is no such fee.

In one San Francisco case, according to a court filing, a defendant named Juan Contreras claimed he made more than 20 court appearances on a felony domestic violence charge and paid some \$20,000 to his bond agency, but was returned to custody when he did not answer the bond agent’s calls.

Between 2010 and 2015 in California, the number of bail complaints to the Department of Insurance nearly quadrupled and became more serious, the department said, with common grievances including kidnapping and false imprisonment for purposes of extortion, forged property liens and death certificates, and theft or embezzlement of collateral.

Complaints about bail bond agents have flooded into insurance regulators across the country, but rarely result in meaningful punishment.

Part of the problem, regulators say, is that they are outmatched and do not have the resources to investigate abuses. The California insurance commissioner, Dave Jones, said he had twice tried to get a law passed to pay for bail investigations, but both times it was defeated after lobbying by the bond industry.

Mr. Clayton of the American Bail Coalition said bond agents objected because the department had over-criminalized the insurance code, pursuing violations as felony cases rather than focusing on revoking licenses.

In Mr. Chiotti’s case, a criminal court judge dismissed the charges against Mr. Peters, the bondsman, saying the evidence did not show attempted extortion. A lawyer for Mr. Peters declined to comment. Mr. Peters reached a confidential settlement with Mr. Chiotti and surrendered his bail license.

An Upside-Down System



Christopher Franklin at his home in Charlotte, N.C. Mr. Franklin said his bondsman turned up at his house in the middle of the night, handcuffed him and drove him to jail.

Travis Dove for The New York Times

It is not hard to find people whose entire lives have been upended by the bail bond industry. Some defendants wind up in jail for no offense other than falling behind on their bail payments. Others decide to plead guilty to crimes that they did not commit just to escape from the financial demands of their bondsman.

Frankie Bell's troubles began last January in New Orleans, when she was charged with misdemeanor domestic abuse after getting into a squabble with her boyfriend. Ms. Bell, 26, had no criminal record. With help from her uncle, she was able to pay the \$1,500 premium. But the bond company, citing the fact that she had a Texas driver's license, required her to wear an ankle monitor — at a cost of \$300 a month.

It took less than two weeks for Ms. Bell, who is mentally impaired and lives on \$700 a month in disability payments, to fall behind. Almost immediately, the calls from her bail bond company began, she said. "They would threaten to put me back in jail," she said. "They said they would send the police to my house, arrest me and throw me into a cell."

Ms. Bell said she tried panhandling on the street, begging her friends for money, and letting other bills slide. Still, by the time she appeared in court in April, she was \$800 behind. Ms. Bell had maintained her innocence from the start, but faced a stark decision: plead guilty in a deal that spared her any jail time, or risk being locked up before trial for failing to pay the bond agent. "I don't want people to think of me as a criminal," she said, "but I just wanted it all to end."

Often, even pleading guilty is not enough to get free of the bond agent's power, since defendants may still owe money. Christopher Franklin pleaded guilty to a misdemeanor assault charge in February 2017. He had paid his bondsman, Rodney Sawyers, more than \$4,000, and owed only \$300 more.

But about a week later, Mr. Franklin said, Mr. Sawyers showed up at his house in Charlotte, N.C., in the middle of the night, pounding on the front door.

Mr. Franklin stumbled to answer, disoriented and groggy. Mr. Sawyers muscled his way in, Mr. Franklin said, handcuffed him and drove him to jail.

Mr. Sawyers did not respond to requests for comment.

Mr. Franklin's public defender in the case, Eli Timberg, said he has routinely had clients returned to jail for not paying their bondsmen, but Mr. Franklin's case stood out. "There were no active charges," Mr. Timberg said. "No bond out for him. It was unbelievable."

Even the jail staff seemed perplexed when Mr. Franklin arrived, he said, since his case was no longer pending. After five hours, he was released.

Follow Shaila Dewan on Twitter: [@shailadewan](https://twitter.com/shailadewan).

Follow Jessica Silver-Greenberg on Twitter: [@jbsgreenberg](https://twitter.com/jbsgreenberg).

A version of this article appears in print on April 1, 2018, on Page A1 of the New York edition with the headline: Extortion, or the Price of Freedom?.

The Sunbury News

POSTED ON [APRIL 1, 2018](#) BY [SUNBURY NEWS](#)

Ohio House Hearing on Bill That Would Abolish Bail

FEATURES



An Ohio House Criminal Justice Committee hearing on a controversial bill that would effectively end bail in the state will take place Tuesday, March 20.

Authored by Representative Jonathan Dever (R-Madeira), House Bill 439 was written to require courts to use a risk assessment tool to determine if individuals are to be released on their own recognizance and at no cost while they await trial. The intention is to create a fairer system in which the poor cannot be held in jail indefinitely, while wealthier individuals are allowed to “buy” their way to freedom.

Similar bail reform legislation has been implemented in other jurisdictions throughout the country. However, there have been numerous reports of considerable pushback on the new laws coming from judges, prosecutors and law enforcement, as well as the public.

Jeff Clayton, Executive Director of the American Bail Coalition, will be testifying at the hearing.

HEARING ON CONTROVERSIAL BAIL REFORM BILL IN OHIO HOUSE OF REPRESENTATIVES MARCH 20

House Bill 439 Would Require Courts to Use Risk Assessment Tool to Determine if Defendants Represent Danger to Society

WHEN: Tuesday, March 20

WHERE: Ohio Statehouse

WHAT: Hearing in the Ohio House of Representatives for House Bill 439. Introduced by Representative Jonathan Dever, the bill would require courts to use the results of a validated risk assessment tool in bail determinations; to allow nonmonetary bail to be set; to require courts to collect certain data on bail, pretrial release, and sentencing; and to require the state Criminal Sentencing Commission to create a list of validated risk assessment tools and monitor the policies and procedures of courts in setting bail and utilizing pretrial supervision services.

The bill attempts to correct the perceived problem of unfairly punishing individuals who cannot afford bail by forcing them to languish in jail, while those with money can afford to buy their way to freedom.

The bill is controversial because the veracity of the risk assessment tool has been called into question by a variety of experts on the subject, including independent criminal scholars, judges and district attorneys in jurisdictions where similar laws have been enacted. Recent studies covering areas including Houston, Texas and the entire state of Kentucky showed new crimes and failures to appear in court actually increased under similar legislation.

Taxpayer cost is also a significant factor, due to the huge expense of implementing and enforcing the new systems that would have to be put into place. In New Jersey, which put similar laws into place last year, the state has run out of money to pay for its enforcement. This has forced the judiciary to turn to lawmakers to demand that taxpayers fund its continuation.

WHO: Jeffrey Clayton, Executive Director of the American Bail Coalition, a non-profit organization that is committed to developing the most efficient means for the pretrial release of criminal defendants by reducing the financial impact on state government and taxpayers, while maximizing public safety.

THE BLADE

COURTS

Ohio considers altering its bail system



By ZACK LEMON | BLADE STAFF WRITER

Published on April 6, 2018 | Updated 10:44 a. m.

The United States Constitution outlaws excessive bail along with cruel and unusual punishments, while the Ohio Constitution guarantees almost everyone the right to bail before trial.

But that is not sufficient for Ohio lawmakers who want to reform the state's bail system because of the costs associated with locking up defendants waiting for trial — and they're using Lucas County as the model for statewide changes.

"Paying for them to spend time in jail is a cost to our local governments that's becoming more burdensome," state Sen. Robert McColley (R., Napoleon) said.

He introduced companion legislation in the Senate that mirrors House Bill 439, which would allow all courts in the state to impose conditions instead of setting monetary bail to ensure defendants will appear in court, and requires courts to use a validated risk assessment tool to guide their bail decisions.

"We need to find balance in the system," he said.

Lucas County's public safety assessment tool came from the Laura and John Arnold Foundation, and it is one of many choices local courts could choose from should this legislation pass.

Lucas County Common Pleas Court Judge Gene Zmuda has been a supporter of reform efforts and uses the county's safety assessment to get another look at what sorts of risks releasing a defendant might entail.

Based on nine questions, the tool can evaluate how likely a defendant is to show up for court dates, and the likelihood a defendant will commit a crime while out of jail. By weighing those measurements and other factors like employment status and community ties, a judge can decide to grant a recognizance bond — meaning defendants sign a promise saying they will appear in court without paying anything — impose conditions on bond, or require a traditional monetary bond.

"You always have to rely on the particular facts of any case," Judge Zmuda said. "I like it because we didn't have this kind of evidence before."

But the Lucas County experiment has not worked as well as county officials have claimed, said Mary Smith, president of the Ohio Professional Bail Association and owner of Smith Bonds & Surety.

"I'm not just fighting for my business," she said. "That's not the real reason I'm doing this. The cost to the taxpayers is astronomical."

Pretrial services in Lucas County has a \$1.2 million budget for 2018, said Michelle Butts, who oversees the department. Jail costs have continued to increase, from a total of \$27.7 million in 2015 to an anticipated \$34.2 million in 2018. That does not match the trend officials saw in Summit County, which implemented a comparable program and saw every dollar spent on pretrial services save the county \$10 in jail costs.

Pretrial services screens most defendants who are booked into the Lucas County jail by using the PSA tool, and enforces the conditions set by judges

as a term of their bail. Fourteen officers do the screening, and an additional five officers monitor defendants out on a conditional recognizance bond.

“We knew we weren't giving the judges very good information,” Ms. Butts said, “and over the course of time it turned into our recommendations being charge-based more than risk-based.”

More than half the people screened by the public safety tool are not recommended for release, meaning they are more likely to receive a monetary bail requirement. Since the PSA was implemented in the county, the number of defendants released on their own recognizance nearly doubled, from 14.4 percent from 2012-14, to 27.8 percent in 2015, which is the most recent data made available by the county. A more updated report is expected in the next 30 days.

Since 2015, when Lucas County shifted away from bail schedules, Mrs. Smith said she has 50 percent fewer clients in the county. She said her business, which incurs significant financial penalties when defendants fail to appear, has done and will continue to do a better job monitoring defendants awaiting their day in court than a government bureaucracy can.

“When somebody fails to appear, we can cross county lines,” she said. “Toledo police can't cross county lines to bring somebody back.” When a defendant fails to appear, her company also takes on the cost of tracking down the defendant.

Should the pending bills in the General Assembly pass, Ohio would join a group of states across the political spectrum in altering or reforming its bail system. Conservatives may want to cut costs by using pretrial monitoring instead of costly incarceration, while liberals may be more concerned with the harms associated with spending time in jail.

“No matter what you care about, it all leads to the same path,” Rachel Sottile Logvin, vice president of the Pretrial Justice Institute, said.

Mrs. Logvin is opposed to the bail system as it exists in most states, which by its nature offers advantages to those with greater assets.

“The impoverished are detained and the wealthy are released,” she said.

Though the bill pending in the statehouse allows the use of monetary bail, American Bail Coalition Executive Director Jeffrey Clayton expects monetary bail would largely be done away with in Ohio if the bill passes.

“We’re not huge fans of it,” he said of the bill. “It would put a lot of hurdles in place for judges to impose bail.”

Reforms can be introduced that make bail more affordable for the poor, Jonathan Smith, COO of Smith Bonds & Surety and Mrs. Smith’s son, said, and Ohio legislators do not have to look far for options. Michigan allows a bondsman to put up a quarter of the stated bond amount when the defendant has a 10 percent option, meaning that a defendant would only pay \$250 to a bondsman to satisfy a court’s \$10,000 bail requirement.

Both bills will continue moving through the legislative process. More testimony is expected in the House Criminal Justice Committee prior to any vote.

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THE ADVOCATE

BATON ROUGE • NEW ORLEANS • ACADIANA

What ails Baton Rouge's bail system? Slain Zachary officer's slaying a tragic example

BY GRACE TOOHEY and LEA SKENE | gtoohey@theadvocate.com APR 8, 2018 - 4:00 PM



Christopher Lawton's casket is brought outside at his funeral service on March 17, 2018. The Zachary reserve officer was killed in the line of duty.

Advocate photo by Patrick Dennis

In the year before Albert Franklin allegedly killed a Zachary reserve police officer in a March hit-and-run, he was arrested five times. Each time he was released on bail.

Despite his repeated run-ins with the law, several judges and a commissioner continued to set bail for Franklin. The court record does not show any judge reconsidering his bail in light of the subsequent arrests or any prosecutor raising red flags about him.

The only time a judge took a fresh look at bail for Franklin — a 33-year-old convicted felon with charges for violent crimes pending in neighboring St. Helena Parish — was when state District Judge Trudy White last November lowered the bail amount on a series of drug and weapons counts previously set by a commissioner at \$88,000. White reduced the bail to \$9,000; Franklin quickly posted bond and was released.

Within four months of that release, police found themselves again searching for Franklin — that time for an alleged assault — but when two undercover Zachary police officers attempted to apprehend him, Franklin drove over Christopher Lawton, killing the officer.

Lawton's death created a political maelstrom around a judicial process that continued to let Franklin out, with many local leaders taking aim at White's reduction of his bail.

"This is what happens when the criminal justice system doesn't coordinate and communicate their efforts," Rafael Goyeneche, president of the Metropolitan Crime Commission in New Orleans, said of the case. "The only good that can come from this is to examine what happened here and try to ensure this type of tragedy doesn't happen again."

When police arrested Franklin in the November incident, finding drugs and a gun in his vehicle and chasing him as he tried to run from officers, they also arrested his passenger, Lana Rainwater. Rainwater — who had no known criminal past and claimed none of the drugs and weapons were hers — sat in jail, unable to scrape together the cash necessary to reach her \$48,000 bail for months after Franklin had bonded out.

Criminal justice experts say Franklin's history, juxtaposed with Rainwater's, highlights the shortcomings of the pretrial system in East Baton Rouge Parish, fueled by gaps in oversight by both judges and prosecutors and an overall lack of communication.

Other critics say that the real culprit is the money bail system itself, which often allows a person's financial status — not necessarily the risk they pose to public safety or their chances of showing up for future court dates — to determine whether they're stuck in jail, awaiting trial.

'Lacking representation'

Franklin was booked into jail five times in 2017, primarily on drugs and weapons offenses. He posted bond each time — always set at less than \$10,000 — before Zachary police issued an arrest warrant in March, accusing him of striking his girlfriend in the face with an AK-47 rifle.

Two undercover Zachary police officers attempted to arrest Franklin on March 12 in the parking lot of the Walmart in Baker. Franklin ran over Lawton in a U-Haul truck as he tried to drive off, police said. He was arrested not long afterward, this time booked with first-degree murder. Franklin is now being held without bail, which the law allows for that serious of a crime.

After the officer's slaying, prosecutors in St. Helena Parish moved to revoke his bail for multiple charges, some violent, in that parish ongoing from 2015 and 2016, and East Baton Rouge prosecutors followed suit, filing for bond revocation on two different charges from his 2017 arrests.

At a recent hearing, the public defender's office was assigned to represent Franklin. The office declined to comment on the details of his case.

Each time Franklin was arrested in 2017, one of the eight criminal judges or an appointed commissioner in the 19th Judicial District Court assigned his bail, depending who was on duty when the arrest was made. Before Lawton's death, it does not appear anyone within the judicial system raised any questions about Franklin's potential threat to public safety or the possibility he would commit more crimes while released on bail — despite his criminal record dating back before 2005.

Within 72 hours of an arrest, courts are required to hold an initial appearance hearing, where judges inform defendants of the accusations against them and their bail amounts. Defendants typically appear before a judge via video conference from Parish Prison if they haven't already posted bond.

No prosecutor from the District Attorney's Office attends those hearings or consistently reviews bail amounts. And while a representative from the public defender's office usually is there, it's only to keep track of cases, not to represent defendants.

If the defendant needs a public defender, the judge can assign an attorney at the initial appearance hearing. But Lindsay Jarrell Blouin, deputy defender for the 19th Judicial District, said typically her office isn't assigned until the arraignment — 60 to 90 days after that initial appearance.

While East Baton Rouge District Attorney Hillar Moore said his prosecutors usually receive cases before public defenders do, it's still normally about two to six weeks after an arrest. Prosecutors have 60 days to decide whether or not to charge someone after a felony arrest if the defendant is still in jail, and five months if the accused has bonded out.

Not having an informed prosecutor and defense attorney at that initial appearance — or even involved over the next few months — greatly hinders what should be an adversarial process, said Phil Telfeyan, executive director of Equal Justice Under Law, a Washington nonprofit that works to eliminate inequality in the justice system.

"Lacking representation from either side deprives the judge," Telfeyan said. "Even if the DA and public defender aren't there on the first hearing, ... the idea that it takes even more than a couple of days to get to defense and prosecution, ... that's rather incredible to me."

Cherise Burdeen, CEO of the Pretrial Justice Institute in Washington, which advocates moving away from the money bail system, said it is "poor practice and potentially unconstitutional" to have those initial hearings without both sides represented. But she said unfortunately that's not uncommon in courthouses across the country.

Moore and Blouin both said they would prefer being involved earlier on, but manpower and funding shortages hinder their work.

In New Orleans, a representative from the public defender's office is at all initial hearings, and someone from the District Attorney's office attends some, according to the Orleans Parish deputy judicial administrator. A prosecutor does review all new arrests and bail amounts, said Orleans Parish District Attorney spokesman Ken Daley.

Setting bail

Judges are expected to take 10 factors into consideration when setting bail, including a defendant's criminal history, whether the person was out on bail for another felony and the presence of controlled substances, according to state law. When Franklin was arrested in November, all three of those factors applied to him.

The 19th Judicial District's bail bond office compiles information about each defendant for the judge setting bail to consider, usually including an arrest report, criminal history and an interview with the defendant. Frank Howze, director of the bail bond program, said his office generally runs a criminal history check in Louisiana, and if the defendant has ties to other places, they check a national database too.

Franklin was convicted of possession of cocaine in 2005 and in 2007 of attempted unauthorized entry of an inhabited building for incidents in St. Helena Parish. He completed his sentences and parole in 2012, according to the Department of Corrections. He has multiple pending charges in St. Helena Parish, including second-degree battery and four counts of aggravated assault with a firearm from incidents in 2015 and 2016, according to court records. He was also convicted of possession of drug paraphernalia in 2016 in East Baton Rouge, records show.

It's unclear what exactly the judges who set Franklin's bail — including White, Judge Richard Anderson and Magistrate Commissioner Nicole Robinson — were aware of when they reached their decisions. None of the eight criminal judges for the 19th Judicial District returned multiple calls and emails requesting comment on the bail process.

Many jurisdictions across the country, including New Orleans, have implemented a computer program-based or in-person risk assessment to evaluate the likelihood of recidivism and determine whether defendants pose a threat to themselves or others.

Moore has consistently endorsed bringing such a process to East Baton Rouge as a means of providing more information to judges, and Blouin said the public defender's office would also support moving in that direction.

"When you completely leave it up to the discretion of judges based on their view, you get incredible variation," said Burdeen, of the Pretrial Justice Institute.

In Franklin's case, he was arrested in late September on cocaine possession. White set his bail at \$3,500, and he bonded out. Less than two months later, police stopped him for reckless driving. Officers found drugs, alcohol and a firearm in the car, and Franklin tried to run from them, according to his arrest report.

Commissioner Robinson initially set his bail at \$88,000 for that arrest. The next day White lowered that bail by \$79,000, and court records show that Franklin soon posted bond.

Moore said his office was unaware of the bail reduction, but in hindsight found the initial \$88,000 amount "appropriate."

Two weeks after being released on the \$9,000 bond, Franklin was booked again on Nov. 28 on a count of illegal possession of a stolen firearm. Anderson set his bail then at \$5,000, which Franklin soon posted. However, Anderson did note on the bond form to "notify Judge White of new arrest."

It is unclear if White took another look at the case.

Franz Borghardt, a local defense attorney and former prosecutor, chose not to comment on the case directly but said that if a defendant hires an attorney soon after an arrest, that lawyer — or even a family member or friend — can contact the judge and make a case for setting lower bail or more lenient conditions. "And most of the time, the prosecutor doesn't even have the file yet," he said.

Moore said his office didn't receive files from law enforcement for the three late 2017 arrests until the end of December. Prosecutors did charge Franklin in the Nov. 13 arrest in January. And after the death of the Zachary officer in March, Franklin was also charged in the September cocaine possession.

But Prem Burns, a former first assistant district attorney in East Baton Rouge Parish, said that based on the volume of incidents with Franklin, the office should have been taking more action, including asking judges to raise or revoke his bail. She said when

prosecutors charged Franklin in January, they should have seen his other arrests and the pending charges in St. Helena parish.

"Who dropped the ball in the DA's office?" Burns said. "At the very least they should have filed to raise bail. ... You have some responsibility when you see this guy has been arrested three times within a year."

Moore said if he had been notified of Franklin's troubled past sooner, or if his office had a representative reviewing arrests and their connection to other cases earlier on, he would have pushed for raising or revoking bail.

"I'm sure a different action would have been taken," Moore said. "I would like to have had him on my radar."

Zachary Police Chief David McDavid said he became aware of Franklin in October, but the man became a greater issue after he was released on bond in November. McDavid said he often notifies Moore about repeat offenders so prosecutors can push to increase or revoke bail. But in this case, McDavid said he has no record of informing Moore about Franklin.

St. Helena District Attorney Scott Perrilloux also said he was unaware of Franklin's most recent charge in East Baton Rouge Parish following the November arrest, despite having ongoing cases against him. It was only after Franklin was arrested in Lawton's death that, specifically within East Baton Rouge pretrial practices, others blamed a bigger target: the money bail system as a whole.

Jon Wool, director of justice policy for the Vera institute in New Orleans, which works to end unnecessary detention, said the purpose of bail is to ensure people show up to court, but that inherently ignores public safety concerns. He said bail, in practice, only provides a path to freedom for those with access to funds and leaves those without behind bars.

But Jeff Clayton, executive director of the American Bail Coalition, a bond industry trade group, argues that money bail provides an incentive for defendants to attend their court hearings. Clayton said bondsmen are an important piece of the system because they have some authority to track down defendants, if necessary.

When Rainwater, Franklin's passenger, was arrested with him on Nov. 13 on drug and firearm counts, her bail was set at \$48,000 — about half of his initial \$88,000 bail. But when White reduced Franklin's bail to \$9,000, she did not similarly reduce Rainwater's.

Rainwater filed a motion asking for a bail reduction, according to court documents. She then wrote a letter to White from jail in December, pleading with the judge to lessen her financial burden so she could get back to teaching special education and taking care of

her children. Rainwater, 37, resides in Mississippi and has no criminal history there or in Louisiana, according to the corrections departments in both states.

White ultimately amended her bail to \$2,500 and released her without enforcing the financial obligation in January, according to court documents. It was not clear when exactly she was released, though court documents indicate she spent at least three months behind bars.

Reached by telephone, Rainwater's mother said her daughter declined to comment on the case. Her court-appointed attorney said in March that he was unaware of her case.

Louisiana Public Defender James "Jay" Dixon said while he knows bail was created to ensure people come back to court for their cases, that is not how it works in actuality.

"The poor stay in jail," Dixon said. "If you have money to get out, you're going to get out."

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Alternative Bail System Tested in San Diego County

Human Rights Watch estimates San Diego taxpayers pay more than \$321,000 for holding un-sentenced prisoners.

By [JW August](#)

Published at 5:54 PM PDT on Apr 24, 2018 | Updated at 11:12 PM PDT on Apr 24, 2018



San Diego County is testing an alternative system where monetary bail is not the primary basis for deciding who stays in jail. NBC 7's Investigates' Mari Payton explains. (Published Tuesday, April 24, 2018)

For those with enough money or property, making bail is only an inconvenience. But for thousands of other Californians, not posting bail could mean they can't work or care for their families.

Even if they are never convicted of the crime of their arrest that time in jail can increase the cycle of poverty.

A [Human Rights Watch report](#) released last year concluded that "California's system of pretrial detention keeps people in jail who are never found guilty of any crime."

The report is a criticism of the state's monetary bail system and of those involved in the system, who the report said are "not in it for justice."

In addition, Human Rights Watch said that some "judges and prosecutors use custody status as leverage to pressure guilty pleas." All of these dynamics are part of a growing movement to change the monetary bail system in California and across the country.

On the other side, advocates for crime victims and the bail industry said bail reform would put more of an emphasis on criminal rights rather than victims' rights.

The system impacts different lives in different ways. Maria Elena Morales of San Diego said she's paying back \$2,400 she owes a bail bond company.

"It's a lot of money as a single mother, I don't have that extra money," she told NBC7 Investigates.

Morales signed a note to bail her friend out of jail but that friend never showed for his court date. He is still wanted on outstanding warrants.

"I felt ashamed, I should have known better but I didn't," Morales said.

Ashamed because Morales is an activist who works with prisoners returning to society. She admits she made a mistake in judgment but feels the court did too. In each case, she thinks, more information might have led to a different decision.

Providing more information about defendants to Judges is one of the main focuses of the ['Pretrial Detention Reform' study](#), organized by a group of California Judges.

The judges behind the study, along with the urging of the state's Chief Justice Tani Cantil-Sakauke, recommended the state establish a new system based on an assessment of a defendant's flight risk. The current system, the report concludes, "bases a person's liberty on financial resources rather than the likelihood of future criminal behavior".

"We must not penalize the poor for being poor," Cantil-Sakauke said.

San Diego County is already testing an alternative system where monetary bail is not the primary basis for deciding who stays in jail. Judges receive a limited assessment of those charged prepared by the San Diego Sheriff's Department.

Judges and attorneys NBC7 Investigates spoke with said the information is helpful but not complete.

Other counties are looking at other possible methods to replace their current systems. Both those in favor of and those opposed to the suggested reforms acknowledge California with its large counties with hundreds of judicial officers and its smaller counties with smaller judicial system face a challenge to find one system that fits all.

In reviewing the latest numbers available for the years 2014-2015, there were on average 2,814 un-sentenced prisoners or about 53% of the total jail population in San Diego every day, according to Human Rights Watch.

Human Rights Watch estimates it costs about \$114.00 a day per prisoner, which would equate to about \$321,000 dollars-a-day to keep un-sentenced prisoners here in local jails.

The presiding judge of the criminal courts in Los Angeles County, Scott Gordon was on the 'Pretrial Detention Reform' panel. Judge Gordon told NBC7 Investigates that a "better, fairer and a safer system" is needed.

That is the goal of reform for all of California courts he says. Gordon said not everyone agrees on how this should be done but something must be done.

"The process we have recommended here is to provide more information to judges so that when they make the decisions, they're doing it with as much information as possible," Gordon said.

This has resulted in proposed legislation, [Senate Bill 10](#), which would provide among other things computer-generated risk assessments of each defendant to help judges decide if the defendant is a danger to the community. It's being tweaked to find a compromise that will satisfy all the stakeholders in this game-changing overhaul of the state's criminal justice system.

But for every suggestion for reform, there are counter concerns. For example, Human Rights Watch said using risk assessment tools are only as good as the information provided. The assessments could reflect a system "that is itself riddled with racial bias" the group says.

Judges like Kent Hamlin of Fresno County are uneasy about the Senate bill as proposed. Hamlin feels that experienced judges are capable of making the right decision.

"We're releasing people every day under conditions other than posting bail," Hamlin said. He sees the proposals as diminishing the role of the judge.

"We have a lot of options and we're using them," Hamlin said.

Hamlin is a member of the 500-member California based Alliance of Judges who support his position in opposition to Senate Bill 10 as currently written.

Not surprisingly so does the bail industry. NBC7 Investigates spoke with Bill Clayton, an attorney from Denver, Colorado who represents the American Bail Coalition.

“The argument is to deny the right to a monetary condition of a bail entirely is unconstitutional,” Clayton said.

Clayton said similar efforts in other states have gone poorly, adding it will have an impact on jail populations and will result in “higher crime and higher failure to appear”.

Judge Gordon counters this, saying bail reform is working in other states and in the end will improve the system by providing more information to judges.

“The current system that only looks at one factor, the financial ability to pay bail is not a fair system and doesn't provide the safety that should be provided to the citizens of California,” Gordon said.

Last month, California's Attorney General Xavier Becerra voiced his support for bail reform, saying the system is discriminatory towards poor Californians.

NBC 7 Investigates has been told by one of Senate bill 10's authors that the state bill is being reworked to create more support for the measure. It's set for review by the State Assembly Appropriations Committee later this year.

April 26, 2018

New Mexico Governor Offers Advice to Utah in Video

Martinez warns Utahns about 'revolving-door' criminal justice practices.

By Ray Howze [@rayhowze1](#)



New Mexico's governor wants Utah to listen—just listen, carefully.

“Keeping dangerous criminals off the streets and behind bars where they belong has always been one of my top priorities,” Gov. Susana Martinez said in a video message [posted to YouTube](#).

Sounds reasonable, right?

But there's more to Martinez' message. It's directed at pretrial detention reforms—bail and how courts determine the dollar amounts—and has been a topic Utah court officials and legislators have seriously discussed since last year.

“Here in New Mexico, we’ve been working hard to crack down on a catch-and-release revolving-door criminal justice system—a problem that irresponsible interpretations and rules implemented by courts and the Arnold pretrial risk assessment tool have only aggravated,” the governor goes on to say. “New Mexico implemented this pretrial risk assessment tool to devastating results.”

The video shared with media outlets was part of a [news release posted](#) by the American Bail Coalition (ABC) this month. The coalition is a bail-advocacy organization opposed to courts implementing a new screening process developed by the Linda and John Arnold Foundation that is meant to help predict whether a defendant will commit a crime while on bail.

The screening process creates an automated report that includes a defendant's background information, failure-to-appear records and their history of violent offenses. It then rates them on a 1-6 scale based on how likely they are to miss a court date.

The algorithm-based process is controversial. Supporters say the system [could limit prejudicial judgments](#) that could be influenced race, gender and even clothing, according to the Associated Press. Critics, like the ABC and Martinez, say it supplants a judge’s own judgment and creates the proverbial “revolving door.”

However, the ABC’s news item said Utah would “roll out broad criminal pretrial release reforms that include the state-wide implementation of the Arnold Foundation’s Pretrial Risk Assessment Tool” on May 1. According to Utah Courts spokesman Geoff Fattah, that is not accurate.

“The information being put out by the bail industry is not correct,” Fattah told *City Weekly* via email. “We haven't set an implementation date.

“We are still training people, from jail staff to judges. Once we have done that, we will set an implementation date.”

When reached by phone Wednesday, ABC Executive Director Jeff Clayton said it’s “an open question” on how it will be implemented in Utah. Clayton said he was unsure about the May 1 date included in the organization’s news release.

Utah legislators discussed the reform last September, but failed to delay the system’s implementation. Court officials said they would move forward, according to a report in [The Salt Lake Tribune](#). Then in the coming months, officials switched course and said they’d [work with lawmakers](#) before launching the program.

“The way the law is set up, judges could probably ignore it if they want to.” –ABC Executive Director Jeff Clayton [click to tweet](#)

Clayton said one possible source of confusion could have originated from bail-bond companies and whether they were operating under the impression some of these reforms would take place next month.

“We’ll see what the judicial behavior is toward all this,” Clayton said. “The way the law is set up, judges could probably ignore it if they want to.”

Martinez’ video was shared through a YouTube account not associated with the governor’s office, but one connected to public-relations agency Media Vista Public Relations, working on behalf of ABC.

“The original video shot by Gov. Martinez was sent by her directly to members of the legislature, judges and DAs,” said Elliott Chang with the public-relations company. Chang said they were given a copy and permission to “use it as they wished.”

When asked for clarification Wednesday, a spokeswoman with Martinez’ office responded: “The implementation of the pre-trial detention rules by the New Mexico Supreme Court is disastrous for our communities. The governor will continue to stand against dangerous criminals and repeat offenders being let out on the streets and will lend her voice to any state considering these faulty rules.”

Fattah said there are a few major differences between what Utah is considering and what New Mexico did.

“[Utah] did not pass a constitutional amendment, and [Utah] did not do away with monetary bail,” Fattah wrote. “Cash bail will still be available as an option to all of our judges.”

So, bail reform is still in the works. Just listen carefully.

“I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street to terrorize communities,” Martinez later said in the video.

Skeptical, indeed.



Albuquerque-Metro

Gov. Martinez creates video message warning Utah of bail reforms

By: Madeline Schmitt



ALBUQUERQUE, N.M. (KRQE) - Gov. Susana Martinez is urging the State of Utah to be careful as it undergoes a bail reform.

Last year, judges in Bernalillo County with the 2nd Judicial District Court started using the Laura and John Arnold Foundation tool. It's a public safety assessment that moves away from a money-based bail system and instead focuses on the risk a defendant poses to the community and if they'll make their court appearances.

As a result, more people are being released from jail on their own recognizance.

So as crime has climbed in New Mexico recently, the once-full Metropolitan Detention Center is only 1 to 70 percent capacity as of today, April 25.

Some people point to the year-old Arnold tool as the problem; among them is Gov. Martinez. She recently appeared in a video, posted to the American Bail Agent Coalition's YouTube page, warning the State of Utah about the tool.

"As leaders in Utah work to consider reforms to bail bonds and pretrial detention rules, I know your top priority is to keep your citizens safe from dangerous and repeat criminals," she says in the 1 minute 18 second video.

A Utah Courts spokesperson tells KRQE News 13 it will soon be implementing the Arnold tool, however, the spokesperson clarified that its version of the tool still recommends cash bail for more serious crimes. They also said the bail industry, which is behind the YouTube video, is not being accurate.

"New Mexico implemented this pretrial risk assessment tool to devastating results. I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street to terrorize communities," the Gov. says in the video.

Meanwhile, New Mexico's ACLU thinks Gov. Martinez is meddling.

"Susana Martinez really shouldn't be inserting herself into the business of another state," Katie Hoepfner with the ACLU said. "We know that crime has been on the rise since before these measure were implemented and beyond that, it's irresponsible to blame crime on one factor."

When asked about the circumstances of the video, the Governor's Office sent this statement to KRQE News 13:

"The implementation of the pre-trial detention rules by the New Mexico Supreme Court is disastrous for our communities. The Governor will continue to stand against dangerous criminals and repeat offenders being let out on the streets and will lend her voice to any state considering these faulty rules."

We also reached out to the Laura and John Arnold Foundation for its thoughts on the video, and were sent this statement:

"Dozens of communities across the United States have turned to risk assessment as a means to bring more equity into the pretrial process. We believe there is a constitutional imperative to keep moving forward."



Local News

Gov. Martinez creates video message warning Utah of bail reforms

By: Madeline Schmitt

Updated: Apr 26, 2018 12:00 AM MDT



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New Mexico Governor Takes To YouTube To Warn Utah Against Bail Reforms

By WHITTNEY EVANS • 1 HOUR AGO



US BAIL REFORM EXPOSING THE DANGERS OF BAIL REFORM

New Mexico's governor is warning Utah courts against implementing new bail reforms next month. Governor Susana Martinez says the changes will put public safety at risk. But a Utah Court spokesman says Martinez message is ill-informed.

Bail is money or property a person can pay to get out of jail temporarily while they await trial. It's an assurance that they'll show up to court. Next month, Utah judges will start using a new tool that evaluates whether an arrested person is likely to appear in court if released before trial. The idea is to keep dangerous, flight risks in custody—instead of people who just can't afford to make bail.

This week, Martinez posted a [YouTube video](#) aimed at Utah officials. In it, she warns Utah that when New Mexico implemented the tool, it backfired.

“I encourage those in Utah to be very skeptical of voices calling for misleading devices that will result in letting dangerous criminals back on the street to terrorize communities,” she said.

New Mexico voters passed a constitutional amendment in 2016 that makes it harder for judges to hold some people in Jail. Martinez says it created a catch-and-release system in New Mexico's courts.

“We learned from New Mexico's mistakes,” said Geoff Fattah, a spokesman for the Utah Court system. He says the Utah reforms don't tie judges hands like the New Mexico law did.

“We're simply providing information to our judges that can help them make a better assessment as to whether or not somebody should be released on their own recognizance, released with bail or held without bail based on their criminal history, their past history of not showing up for court or fleeing and also their violent case history,” Fattah said.

Utah lawmakers and the bail industry initially pushed back on the risk assessment tool, but Fattah says they now support it.

FEATURES

Bail burdens

Advocates say state bail systems are broken, tend to hurt the poor, and are ripe for reform

by [Emily Belz](#) in New York

Post Date: April 26, 2018 - Issue Date: May 12, 2018



A bail bond agency in Indianapolis, Ind. (Daniel Schwen)

Richard Jimenez was making what he guessed was his 100th trip to “the Boat,” the Bronx prison that is in fact a boat floating in the East River. Jimenez, director of Bronx operations for the charity bail organization Bronx Freedom Fund, travels at least twice a week to the prison to bail out pretrial inmates who don’t have enough money to post bail themselves.

Today he was on his way to bail out a person accused of a misdemeanor offense. Even for an expert like Jimenez, navigating the bail process in New York is no small feat.

It started with Jimenez hopping on a packed city bus for a 45-minute trip from the Bronx court to the Bronx jail. Stop after stop passed, until only one other passenger remained on the bus. Jimenez disembarked on an empty street where odors wafted from a fish processing facility on one side and a wastewater treatment plant and garbage dump on the other. Straight ahead was a long walk to the prison gate.

Jimenez waved to a guard, passed through a barbed wire fence, boarded the boat, and stepped into the bail posting office. The office was small, with eight chairs, an ATM, and no restrooms. (The nearest restroom was about a mile away, Jimenez estimated.) There was no officer at the bail window, which said, “DO NOT KNOCK ON THE WINDOW.”

So as usual, Jimenez stood and waited for someone to come along and help. Today it would cost \$1,000 and take more than three hours total for him to post the bail, even with his paperwork already prepared. This time-consuming and sometimes expensive process, inconvenient for advocates like Jimenez, can be formidable for families and friends of inmates.

Bail is essentially a deposit a defendant puts down and receives back after making all court appearances. Those who can’t put down the deposit stay in jail. Under this system, the accused is presumed innocent yet may remain imprisoned, especially if he is considered a threat to the community.

On any given day in New York City, prisons hold about 7,000 people who cannot pay bail pretrial. Groups like the Bronx Freedom Fund argue that the system unfairly imprisons low-income defendants, separating them from family and jobs.

In New York, Jimenez’s group can legally post bail if inmates are facing misdemeanor charges and have a bail set at \$2,000 or lower. Of those the charity fund has bailed out since it began in 2007, the organization says 96 percent made their court appearances and more than half had all their charges dismissed.

Even when family or friends do have money to bail out a loved one, the process here is archaic and contorted, relying on paper records and fax machines and hours of waiting at bail windows in the city’s far-flung prisons. Fax machine is down? Try again next time.

The bail system is broken outside of New York too. Nationally there's a movement in state legislatures and local governments to reform or even eliminate bail. Reformers argue that the system is outdated and an unconstitutional burden on those who cannot pay. Stuck in prison, many will plead guilty to lesser charges rather than wait months for a trial.

"Bail can be used properly, but it is not in fact being done so," said Craig DeRoche, who heads up advocacy efforts at Prison Fellowship and supports bail reform efforts. Bail in many states is violating the Eighth Amendment, which prohibits "excessive bail," DeRoche said. "If you are not deemed to be a risk, bail should be a very easy and straightforward process."

New Jersey voters in 2014 passed a ballot measure to eliminate cash bail almost entirely, replacing it with a risk assessment system that incarcerates those who are a threat to the community or a flight risk. The law went into effect in 2017, and over the course of last year the pretrial jail population dropped 20 percent. The data on how many made court appearances isn't available yet.

Bail procedures vary widely around the country. In one notable case in San Francisco last year, a judge set a \$350,000 bail for a man accused of stealing \$5 and a bottle of cologne. The man, Kenneth Humphrey, has now sat in jail for almost a year awaiting trial. An appeals court ruled earlier this year that the bail was unconstitutionally high and ordered another bail hearing.

"The process is the punishment," said Ben Barton, a law professor at the University of Tennessee at Knoxville. "The process is wringing everything out of people it can." Barton suggests that courts just need to adopt available technology: ankle bracelets. In the old days, he said, a large chunk of money might have been necessary to keep someone from fleeing the country—but now technology can track them. That "would be better for everybody except the bail bondsmen."

The major trade group that underwrites bail bonds, American Bail Coalition (ABC), has one idea of its own: It proposes that bail bond customers contribute a per-bond fee to a legal aid fund that would serve lower-income people who can't afford bail.

Jeffrey Clayton, the head of ABC, has been busy traveling the country to lobby. "In terms of politics, we've been locked out of this debate," he said. His argument is that states will discover that the bail bond system is uniquely suited to getting people to return to court: Charity bail funds won't go track someone down in

Mexico, and bail bond companies “mitigate risk” financially. (Other bail defenders note the practice has pre-Colonial roots.)

“The proof,” Clayton said, “is in the pudding.”

Jimenez was making his own pudding in the Boat’s cozy bail bond office, where someone had finally come up to the window and pulled aside a small slat to talk.

“Hi, officer, how are you?” Jimenez opened.

“I’m here,” the woman responded gruffly. Jimenez named the person he wanted to bail out and asked the officer to check whether the inmate had any outstanding warrants (one item on the checklist he has to go through). Jimenez also handed over the necessary paperwork.



Jimenez outside the Bronx Criminal Court (Danielle Richards/Genesis Photos)

With the bail process rolling, he went into the prison to meet with the person he was bailing out, partly to remind the inmate to stay in touch with the Bronx Freedom Fund about court dates. Jimenez’s conversation with the inmate lasted about 10 minutes, but the process to see him took more than 1½ hours. Jimenez isn’t an attorney, so he couldn’t discuss the man’s case with him. He didn’t know what the man was charged with except that it was a misdemeanor.

Meanwhile in the bail office, two men came in, one clutching a dollar bill to bail out his friend. In New York, when someone has multiple cases pending in the system, judges may put \$1 bails in place on minor cases if the bail in a larger case seems sufficient. Several people mentioned to me that they recalled prison ministers and rabbis posting \$1 bails for inmates in the past.

No one was at the window, of course, and the men stood waiting for 10 minutes. One eyed the sign warning against knocking. “You just supposed to wait?” he asked. (He didn’t want his name on the record because he himself was on parole.)

An officer finally came to the window, and the man said he wanted to pay his friend’s \$1 bail. He had the inmate ID number written on a cigarette box, which he thought was all he needed, but no—the officer informed him it would take four to six hours to get the needed paperwork. The two men debated what to do for a few minutes, then left without paying.

Jimenez finally returned, but the officer had moved on from the window. He waited several minutes again. The officer returned, and from this point it took him only 20 minutes to post the \$1,000 bail. Receipt in hand, he walked a mile back to the bus stop, three hours after he left the courthouse. The Boat released the inmate two hours later, a much shorter wait time than the previous day, when Jimenez said it took nine hours for release after bail posted.

LATER THAT WEEK in the Bronx Criminal Court, Judge Michael Hartofilis was hearing a series of arraignments—hearings of charges where he would set bail or release the accused on his own recognizance (some jurisdictions have separate bail hearings before arraignment). The dozens of arraignments in the course of the judge’s day shift included charges of theft, drug possession, assault, and failure to complete community service. Family members filtered in and out of the courtroom.

For arraignments in the Bronx, public defenders typically have just a few minutes with the clients before the hearing. If attorneys have time, they might place a call to a family member to determine ability to post bail or to find out what community support is available to ensure the accused returns to court.

Anton Robinson, an attorney with the Vera Institute of Justice, sat in the courtroom. He’s working on a project to get judges to set lower bails or use different forms of bail more in line with what people can afford. When called upon, he and other Vera staff will interview suspects to assess their ability to pay.

“You have to get people to understand that lower amounts of bail will [keep people returning to court],” Robinson murmured from the back of the courtroom.

New York and some other states have alternative bail options, such as partially secured bonds, where a defendant (or their surety) pays the court a small percentage of a bond and is liable for the full amount if he fails to appear. Vera followed 99 cases in New York where judges set partially secured and unsecured bonds, rather than the traditional cash or bail bond. Most of the 99 were able to make bail in those alternative forms, and 88 percent returned to court. A third of those released pretrial had their charges dismissed, and one-fifth ended up with a noncriminal conviction.

This morning officers brought before the judge one young man accused of punching someone and stealing his iPhone. The young man cast a look back to the courtroom seats where his mom was sitting. The defense attorney argued video showed that the accused was simply a witness to the crime, which occurred in a large group. He had no criminal record, and the defense asked for his release pending trial.

The judge wanted information on hospitalization of the victim from the prosecutor—a way to determine how serious the assault charge was. The prosecutor had no information, except that the victim reportedly had bruising around his eye and nausea. The judge set bail at \$5,000 bond, \$2,500 cash.

The mom, sitting by herself, started crying quietly and covered her mouth as she tried to stop. The hearing lasted about three minutes, and officers took the young man in handcuffs out the back door. Charity bail funds here can only cover misdemeanors and cash bail up to \$2,000.

“This is a case where we should have done the assessment,” said Robinson, frustrated, noting that the mom perhaps could have been a surety for a partially secured bond.

A researcher working with Robinson had stepped out of court to visit the bathroom, where she found tucked in the stall door a business card for Allison’s Bail Bonds, a licensed state provider, with the tagline, “Let us get you before your cellmates do.” She mentioned it to Robinson, and he shook his head.

Shortly after, a case came up of a man accused of selling \$100,000 in counterfeit merchandise. Prosecutors asked for a \$20,000 bail. Defense attorney Gaynor Cunningham from the Legal Aid Society asked for the defendant’s release. The

accused had no criminal record, and he worked two jobs in New York, so he wasn't a flight risk, she argued.

Cunningham had called the defendant's boss, who said he would be able to gather \$1,000 from the community for bail if necessary. It would be "taxing," Cunningham said, but "he has people around him to post bail." The judge set bail at \$5,000 bond, \$2,500 cash.

"That was a good bail pitch," Robinson nodded.

Judge Hartofilis released about half of the defendants on the day's docket with no bail requirement: Most were accused of minor violations like disorderly conduct. One could have qualified for charity bail from the Bronx Freedom Fund.

At 5 p.m., the day shift ended. Hartofilis filed out, and the court officers and clerks grabbed their thermoses and jackets. Night court was about to begin, with arraignments continuing until 1 a.m.

(Update: This story has been changed to clarify Anton Robinson's comments.)



Emily Belz

Emily reports for WORLD Magazine from New York City. Follow Emily on Twitter [@emlybelz](https://twitter.com/emlybelz).

THE INDEPENDENT — *A voice for Utah* —

New Mexico governor warns Utah officials of the perils of “Catch and Release”

Gov. Martinez urges Utah not to follow the path of her state

By **Guest Contributor** - 04 26 18 - 5:00 am



New Mexico Gov. Susana Martinez offered a strong, unsolicited warning to lawmakers and other officials in neighboring Utah as they work to overhaul criminal justice pretrial detention laws.

“I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street

to terrorize communities,” Martinez said in a specially recorded video message sent last week to Utah lawmakers, judges, and prosecutors referencing rules that were put into place last year in her own state.

The governor described New Mexico’s struggles with a catch-and-release system of justice aggravated by “irresponsible interpretations and rules implemented by courts.” She directed particular ire towards the Arnold pretrial risk assessment tool, which she said her state implemented with “devastating results.”

Utah plans to roll out broad criminal justice release reforms May 1, which will include putting into effect the controversial Arnold risk assessment tool. The tool uses an algorithm to predict whether or not a defendant will commit another crime or re-offend. However, the underlying data and assumptions behind the conclusions it draws are, by their nature, subjective. This has led to concerns about its lack of inherent fairness and the potential to perpetuate racial bias rather than reduce it.

In 2016 through a bill in the state legislature, Utah’s judicial council attempted to delegate itself the authority to unilaterally implement sweeping reform powers without input from either the legislature or the public. That bill was ultimately voted down. This latest action by the judicial council is contrary to what the state’s lawmakers had already decided: that the power to make such decisions belongs to Utah’s legislature, not its courts.

Prior to being elected governor in 2010, Martinez served three terms as New Mexico’s District Attorney.

Los Angeles Times

Irvine mother who survived violent assault runs organization to empower crime victims

By BEN BRAZIL MAY 03, 2018 | 4:30 PM



Founder Patricia Wenskunas poses for a portrait in front of a wall decorated with positive words at Crime Survivors in Santa Ana. Wenskunas started the nonprofit organization after suffering from a violent crime 16 years ago.
(Kevin Chang / Staff Photographer)

It took nine months for her to trust the man who would almost kill her.

So when he entered her Irvine home unannounced, she was a bit taken aback, but she didn't feel the need to panic.

He said he was there to look at a treadmill she was hoping to sell — something they had spoken about at the 24 Hour Fitness where she built up a rapport with the personal trainer.

Then seemingly out of the blue he offered her a new "weight loss" supplement. It wasn't particularly odd for a trainer to offer supplements to a client, but this drink had a strange blue froth.

She drank it.

Then everything went dark.

She woke up undressed with the man on top of her.

Then Jeffrey Kelavos beat Patricia Wenskunas.

He tried to suffocate her with Saran Wrap and threatened to kill her and then kill her 12-year-old son, Nathaniel—who wasn't home at the time.

"I said, 'God if you give me my next breath, then I would live for community above self,'" she said during an interview.

Wenskunas, fueled by the need to get to her son, was able to wrest herself away from Kelavos and took a plunge over a balcony to escape, fleeing into the neighborhood. Kelavos fled the scene and Wenskunas reunited with Nathaniel.

In 2003, about a year after surviving that attack, Wenskunas founded Crime Survivors, an Orange County-based nonprofit that seeks to empower crime victims. The organization opened a resource center in Santa Ana on April 4, the 16th anniversary of the attack.

"After the incident happened, I went into the mode of helping people so they didn't have to suffer through the victimization and trauma that I did," said Wenskunas, 48, of Irvine. Before the attack, Wenskunas had been abused as a child and suffered through a violent relationship with a man who beat Nathaniel with a paint-mixing stick.



Patricia Wenskunas was beaten by Jeffrey Kelavos. He was sentenced to 120 days in jail. (Courtesy of Patricia Wenskunas)

The reason she sought out Kelavos' help in the first place was to try to tame eating disorders that had plagued her throughout her life.

But it wasn't just the violent crime that fueled Wenskunas' founding of Crime Survivors, it was the seemingly unjust legal saga that unfolded.

During the trial, Wenskunas had to deal with PTSD and depression brought on by the attack as well as a judge who, in her words, lacked basic decency. Wenskunas said former Orange County Superior Court Judge Susanne Shaw berated her throughout the trial.

"At one point she got up off the bench — I had my grandmother's rosary and my son's picture in my hand for some comfort and she took it out of my hand, set it on the counter and said I was making too much noise," Wenskunas said.

The claim isn't unusual for Shaw, who was permanently barred from courtrooms in 2006 following an investigation that determined she had been "abusive and demeaning" to defendants, attorneys, witnesses and prospective jurors. The state Commission on Judicial Performance concluded that there was a "high probability she will continue her unethical behavior if she were to

sit in a judicial capacity in the future," after determining there were 42 instances of misconduct over five cases she presided over in 2003 and 2004.

Shaw eventually tossed out attempted murder charges and Kelavos received 120 days in jail for assault with a deadly weapon and criminal threats.

"All these years later and I still don't understand how he only had to serve 120 days," Wenskunas said.

Wenskunas ended up filing a citation with the state against Shaw.

Kelavos is a free man today. Wenskunas thinks he's still living in Southern California. But she tries to keep her mind from the demons of the past, focusing on the present so she can help crime victims heal.

Crime Survivors has various programs depending on victims' needs.

"We are really providing a place for them to turn to no matter if they need food, clothing or shelter," Wenskunas said.



Patricia Wenskunas, founder and CEO of Crime Survivors, Inc. hugs one of the victims during a dove release in honor of crime victims during the unveiling of the Orange County Victims' Monument design at William R. Mason Park in Irvine. (Photo by Susan Hoffman)

Included in the nonprofit's several programs is supplying victims and law enforcement with victim emergency bags with tools that are helpful for victims

in the days following an incident, support groups, assisting victims with travel and assistance related to legal support, and an education and career fund.

Wenskunas also travels throughout the state to speak with law enforcement personnel about what crime victims go through in the wake of an incident in the hope that it will make first responders' actions more empathetic.

"Patricia is compassionate and driven," Irvine Police Chief Mike Hamel said through email. "For more than a decade, she has championed victim rights in the region, providing reassurance, resources and support for members of our community who have suffered trauma and loss. I commend her for work and the impact she has made."

Wenskunas also does a lot of advocacy work. She's now taking on a computerized justice tool, called a public safety assessment, claiming there are flaws in how it comes to determine whether defendants should be released pending trial. She believes a person should be in charge of making the determination rather than an algorithm.

With the addition of the new resource center, Wenskunas accomplished something she'd been wanting for years. There, victims can get therapy, counseling, attend support groups and take self-defense classes.

"To be able to not be defined by what happened to me but to be empowered and strengthened to help other victims is what this is about," Wenskunas said. "I believe there is a reason I am still here. I made that pact on April 4, 2002, that if God gave me my next breath then I would live for others above myself."

For more information about Crime Survivors, visit www.crimesurvivors.org.

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Ben Brazil

CONTACT

Ben Brazil is a features writer for TimesOC. He previously covered Huntington Beach for the Daily Pilot. Before joining the Daily Pilot in September 2016, he was a reporter for City News Service, a Southern California-based news service. Brazil earned his bachelor's degree in anthropology at UC Berkeley. (714) 356-1396

Google to Purge Ads for Bail Bond Services

Company throws weight behind reformers who want to end the practice of jailing people who cannot afford to pay.

[Scott Shackford](#) | May. 8, 2018 1:50 pm

Google has thrown its support behind the growing movement to [eliminate cash bail](#) by purging bail bond advertisements from its platform.

Beginning in July, Google will no longer accept advertisements from private bail bond services. David Graff, Google's director of global product policy, [explained the decision](#) Monday:

We made this decision based on our commitment to protect our users from deceptive or harmful products, but the issue of bail bond reform has drawn support from a wide range of groups and organizations who have shared their work and perspectives with us, including the Essie Justice Group, Koch Industries, Color of Change and many civil and human rights organizations who have worked on the reform of our criminal justice system for many years.

Vanita Gupta, president and CEO of the Leadership Conference on Civil and Human Rights, put out a statement Monday afternoon [supporting](#) Google's decision:

No one should be incarcerated—before they've even been tried or convicted of a crime—simply because they can't afford not to be. With this ban, Google is doing its part to protect people from unscrupulous advertisers who are taking advantage of the fact that most people will do whatever they can to avoid having to spend time, or having their family member spend time, in jail.



This morning, Google hosted these organizations at a bail reform panel in D.C. to discuss the push for court systems across the country to move away from using cash bail systems. The Charles Koch Institute was represented at the panel and provided a brief statement to *Reason* show support for bail reform:

The Charles Koch Institute (CKI) is interested in driving solutions to the many barriers to opportunity caused by monetary bail. We believe that decisions to detain an individual accused of a crime should be based on public safety and flight risk. These decisions should be consistent with the Bill of Rights and the Eight Amendment, and not be based solely on an individual's ability to pay. CKI is excited to lend our voice to this issue alongside leaders like the Pretrial Justice Institute.

[New Jersey courts](#) have largely eliminated cash bail. Alaska this year changed its system to rely less on cash bail and to use pretrial risk assessments and monitoring tools to try to keep more people out of jail if they have not been convicted. Other states, such as California, are considering changes—and if they don't, civil rights groups plan to force the matter with [lawsuits](#).

But refusing to run ads for bail bond companies isn't changing the law. It limits publicity for a service that many people need to get out of jail right now. The American Bail Coalition, which represents the industry, is not happy with Google's decision and disagrees with the Koch Institute's interpretation of the Bill of Rights. In a prepared statement, American Bail Coalition President Jeff Clayton responded:

It is shameful that Google would deny people access to bail services, which are heavily regulated by state insurance commissioners around the country. For years, Google has taken money from bail companies, like all other legal businesses, to let the marketplace help consumers of services find and research the providers of such services that they need. However, it would appear that Google and Koch Industries have decided to pander to special interests in an attempt to re-engineer society according to their own dictates. Unfortunately, their alarming move to re-write state and federal statutes on their own is inconsistent with the rule of law and the U.S. Bill of Rights.

People who are actually in need of bail bondsmen are still going to be able to track down services. But it's not like Google is purging those companies from its search results. Well, at least not yet. It's worth considering that possibility given that the company says it believes these bail services are a "deceptive and harmful product."

Photo Credit: Lori Martin / Dreamstime.com

[Scott Shackford](#) is an associate editor at Reason.com



Bail-bond industry suffers another blow as Facebook and Google ban ads

The tech giants are using their advertising power to push social causes

by Jon Schuppe / May.08.2018 / 2:16 PM ET

Google and Facebook, the world's most dominant online-advertising companies, will no longer take money from America's for-profit bail bond agencies, siding with [a growing national movement to eliminate cash bail from the criminal justice system](#).

The two tech giants said this week that their decisions to block bail-bond ads were part of a broader effort to protect users from damaging or hurtful content. Typically, that strategy has focused on scams and deception. But that list has recently expanded to include guns, marijuana, payday loans, cryptocurrencies and, now, bail bonds.

David Graff, Google's senior director of global product policy, said in a statement on Monday that the company was persuaded by studies showing that bail bond agencies profited off poor and minority communities, where people who are arrested often must go into debt in order to post court-ordered bonds that guarantee their return for trial.

"We made this decision based on our commitment to protect our users from deceptive or harmful products, but the issue of bail bond reform has drawn support from a wide range of groups and organizations who have shared their work and perspectives with us," Graff [wrote in a blog post](#).

He cited groups from both sides of the political spectrum as having influenced Google's decision, from Koch Industries to the Essie Justice Group, which advocates on issues affecting incarcerated women, and Color of Change, a civil rights group

focused on issues affecting black Americans. Those groups and others were invited to a Google event in Washington on Tuesday to help focus attention on bail reform.

Monika Bickert, Facebook's vice president of global policy management, also reportedly said Monday that the company would stop taking ads from the bail bond industry.

“Advertising that is predatory doesn’t have a place on Facebook,” [she was quoted as saying in a statement](#).

Facebook representatives did not respond to a request for further comment.

The bail bond industry responded with defiance.

Jeff Clayton, executive director of the [American Bail Coalition](#), a trade association, dismissed the announcements as attempts to make the bail reform movement appear bigger than it actually is.

The ad bans won't affect bail bond agencies' bottom lines much, Clayton said, because their websites will still come up under "organic" web searches.

"They'll just have to change their search optimizations to compete with competitors," Clayton said.

But Color of Change Executive Director Rashad Robinson said Monday's announcements could mark the start of something much bigger.

"We hope this decision encourages other corporations to take proactive steps to sever ties with the for-profit bail industry and end the incentives that fuel mass incarceration," Robinson said in a statement.

The movement to eliminate cash bail is driven by the argument that the system makes it harder for poor people to get out of jail while awaiting trial. That, the argument goes, makes them more likely to plead guilty and suffer the lifelong consequences of a criminal conviction. Several cities, counties and states have abolished cash bail, replacing it with systems that allow the release of most people accused of low-level offenses and the detention of those accused of the most serious crimes.

Those changes have hit the bail bond industry, putting agents and bounty hunters out of work.

They've fought reforms, saying they play an important role in the justice system by making sure the law isn't flouted and that dangerous suspects don't prey on more people.

Don Mescia, executive director of United Bail of America, an advocacy group for bail agents, said Google's announcement was "another example of the moral and ethical failings of the American society."

The reform advocates had a much different perspective.

"We won!" the Essie Justice Group [announced in an email to supporters](#).

CORRECTION (May 8, 2018, 6:05 p.m. ET): A previous version of this article quoted a flier that contained incorrect information about the day that Google hosted an event in Washington focused on the issue of bail reform. The event occurred on Tuesday, not Monday.

Wednesday, May 9, 2018

Bail-bond industry suffers another blow as Facebook and Google ban ads

By
AMN



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[Source link](#)

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Posted By: [Matt Welch](#)

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[READ SOURCE](#)



11TH CIRCUIT PANEL JUMPS ON BAIL ISSUE

By: Pete Combs
May 15, 2018 12:51 AM

It could change the way we deal with people who can't afford to pay their way out of jail.

WSB's Pete Combs reports on a case taking place Tuesday before the 11th Circuit Court of Appeals in Atlanta.

The case is about a Calhoun man who argues that he shouldn't be kept in jail because he doesn't have bail money.

Three years ago, Maurice Walker was arrested for walking drunk alongside a road in Calhoun. He didn't have the \$160 he needed to bond out of jail, so he sat there for six days as it took that long to get a hearing before a city judge.

Jeff Clayton at the American Bail Coalition says the standard should be based on the crime you're accused of.

Calhoun has since changed the law, but as WSB legal analyst Ron Carlson tells us,

"The real issue is ... poor people often simply can't afford to make bail."

The case has constitutional ramifications when you consider someone who had the bail money and can pay his/her bond and go free in perhaps just a couple of hours, he added.

Carlson says the nation's legal system is watching to see if the court decides the current system isn't fair and what judges think should take its place

“This decision could affect the way courts deal with poor defendants for years to come,” Carlson stated.

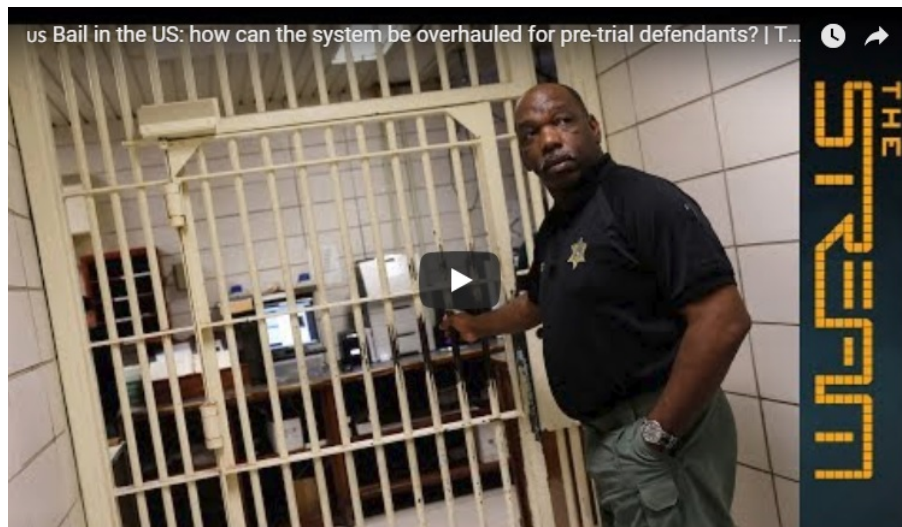
If you go to jail, should your bond be decided by the crime you’re accused of or your ability to pay?



June 4, 2018

Bail in the US: how can the system be overhauled for pre-trial defendants?

People accused of crimes often face daunting choice between protracted time in jail or paying high fees to for-profit bond providers.



Muslims in the US city of Chicago are helping liberate incarcerated individuals from pre-trial detention this Ramadan.

[Believers Bail Out](#) is a programme that encourages Muslims to contribute zakat - a tax on wealth that is a pillar of Islam - towards money bail bonds for jailed pre-trial defendants. The

project is just one of several crowdsourced schemes under the [#endmoneybail hashtag](#) on social media. The projects are dedicated to securing the release of people languishing in jails because they either cannot pay a full bond to a court or pay a for-profit bail bond provider to remain free in the run-up to a final court date.

About [536,000 people are currently held in pre-trial detention in the United States](#) - a higher figure than the total prison population of most other nations. The median income of pre-trial detainees is \$15,109 - but the national median bail bond is around \$10,000, [according to a 2016 study by the Prison Policy Initiative](#). Expensive bond judgments mean big business for private bail bonds providers, which back a defendant's bond obligations to the court in exchange for a non-refundable payment, usually 10 percent of the bond. The US and the Philippines are the only countries in the world where private bond providers operate.

Given that most defendants need to keep working in the run-up to a court date, it's not uncommon for a defendant's family to pay hundreds or even thousands of dollars to a private bond company to ensure their loved one's liberty before trial - pushing vulnerable families deeper into poverty. Furthermore, marginalised communities bear the brunt of this onerous system - [black Americans are incarcerated at more than 5 times the rate of white people](#).

Jail is the only alternative for those who cannot pay the full bond or a fee to a private bonds provider. Many pre-trial defendants are held in detention for days and weeks at a time, with serious consequences for their jobs, homes, and family.

But alternatives to the money bail system are gaining popularity. In 2017 the state of New Jersey [largely abandoned money bail](#) in favour of a system where judges can allow pre-trial defendants to remain free, subject to assessment. In February [the city of Philadelphia passed a resolution](#) urging the end of money bail. Washington DC has run a largely efficient [pre-trial release system without money bail](#) for more than 25 years.

What can be done to make the pre-trial process in the United States more just?

On this episode of The Stream, we speak with:

Jeff Clayton [@ambailcoalition](#)
Executive Director, American Bail Coalition
[americanbailcoalition.org](#)

Cherise Fanno Burdeen [@CFBurdeen](#)
CEO, Pretrial Justice Institute
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Senior Editor, Sapelo Square
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Read more:

When jail feels less like freedom, more like extortion - [New York Times](#)

America is waking up to the injustice of cash bail - [The Nation](#)



PRISONS & POLICING

The \$2 Billion Bail Industry Is Facing an Existential Crisis



Local jails are full of people who can't afford bail, have fallen behind on fees, have missed court dates in order to work, or are accused of crimes of survival.

THOMAS HAWK / FLICKR

WRITTEN BY
Mike Ludwig, Truthout
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Directly across Tulane Avenue from the criminal district courthouse in New Orleans, two bail bond offices sit side by side, hinting at how costly a trip to jail can be in a city where **85 percent** of people who enter the criminal legal system are too poor to afford a lawyer. In New Orleans, bail agents take up to a **13 percent cut (plus fees)** of whatever it costs to win a prisoner's freedom from the city's infamous jail lurking just blocks away, leaving low-income families scrambling for extra cash before loved ones miss a day of work and lose their jobs. The sign hanging on the adjacent law office advertises two services: "Bankruptcy from \$750" and "Divorce from \$500." Next door, a squat brick declares "WE FIX CREDIT" across the front window. Walk another block and you arrive at a 24-hour liquor store.

Around the corner, a coffee shop has sprung up between the eateries, used car lots and numerous bail bond offices that dot the neighborhood. There I meet a group of racial justice activists, including Harriet,* a local organizer working to free Black mothers stuck in jail simply because they can't afford to post bail or a lawyer to navigate the pretrial legal system's web. Along with other activists, Harriet had just reunited two mothers held in jail with their families in time for Mother's Day. "Black people have been bailing each other out since the days of plantations ... we see the criminal justice system as a plantation," she says.

Along with Chicago, Houston, New York and others, New Orleans counts itself among the US cities at the center of the national debate over mass incarceration and the jailing of people who have yet to be convicted of a crime. The city has become a frequent anecdote for everything that's wrong with the pretrial criminal legal system. **Scandals** at the criminal courthouse routinely leap from **local headlines** to the **national news**. The city's infamous jail, which disproportionately houses low-income people of color (particularly **young Black men**) and remains under a federal consent decree, has suffered a spate of suicides and **untimely deaths**, including a 15-year-old boy who **hanged himself from a window bar** last year.

According to Harriet and her colleagues, the pretrial system in New Orleans has little to do with "justice" and stopping crime, and everything to do with race and poverty. "Crime isn't really a problem, it's a system that is set up to keep certain people marginalized," Harriet says. The activists say the local jail is full of people who can't afford bail, fell behind on fees, missed court dates in order to work or are simply accused of crimes of survival, such as shoplifting diapers from a dollar store. "Predatory policing" ensures most arrestees are poor and Black. "You can stay one day in jail, and your whole life is completely

ruined ... even if you are not charged with a crime, you are still deemed a criminal, you've lost so much and you can't shake that stigma," Harriet says.

The number of people jailed in New Orleans has declined in recent years, but the city is still trying to shake its reputation as the "most incarcerated city in the most incarcerated state in the most incarcerated country in the world," as the former mayor **once put it**. To do this, New Orleans has pursued reforms aimed at reducing the number of people who are in jail because they cannot post bail or pay fines and fees. In 2017, the city eliminated bail and bonds for most low-level "municipal" offenses, such as urinating in public, and began releasing most arrestees on their own recognizance. This summer, judges in New Orleans will begin using a computerized "**risk assessment tool**" to better determine who should stay in jail because they pose a public safety risk, and who should be allowed to go home while they await their day in court.

Harriet says the women freed from jail with a **revolving bail fund** in New Orleans have a much better chance of beating their charges once they are out of jail. Legal experts agree, and advocates say ending cash bail is **central** to reducing mass incarceration. "The most critical part of what happens with your case is that initial bail decision on whether you are detained or you are released," says Insha Rahman, a former New York City public defender and director of the bail reform and pretrial program at the Vera Institute. "If you are out of jail, what happens with your case is wildly different than what happens if you are in jail."

New Orleans is not alone. In courts across the US, civil rights lawyers have **successfully** argued that holding people in jail simply because they can't afford to post bail is unconstitutional. Now, city and state governments nationwide are considering alternatives to "cash bail," and **the \$2 billion bail industry** is facing an existential crisis. "They are on the losing side of history," Rahman says. "We are not going to have bail agents in 50 years, I am pretty sure about that."

Not so fast, says Jeff Clayton, the executive director of the American Bail Coalition, the main lobbying group representing the insurance companies that underwrite bail bonds across the country. With the movement to abolish bail gaining traction nationwide — and New Jersey **recently ditching money bail** altogether — Clayton has been busy. "Similar to many other issues, it's not a 'yes' or 'no' question," Clayton tells Truthout. "You're either for cash bail or against it, and I don't think that's productive, because bail is a constitutional right. It's never going to entirely go away, even in the federal system."

I asked Clayton about a central argument against cash bail: That it inherently creates an inequality between those who have the financial resources to post bail and those who don't, leaving the poor scrambling to find extra cash to pay a bail agent or languish in jail. He said inequality runs through the entire system, whether defendants can post bail or not. If you're rich, you can afford a good lawyer, and perhaps you even have political connections that can help you gain favor with the prosecutor and judge. "Under an excessive bail inquiry, judges are supposed to smooth this out," Clayton says. "And while the other side would argue that nobody should be held in jail due to an un-posted bail, you know the reality is, those bails should be lower in the cases of people who have less resources and higher in the cases of people who have more resources."

Clayton said his organization supports some of the same reforms pushed by anti-bail advocates, such as lowering bail schedules, eliminating bail for minor crimes and instituting alternatives to incarceration, such as treatment for people suffering from mental health issues and substance abuse problems. "It's a combination of low bails and lack of due process in many parts of the country that we think is a problem, and frankly, those aren't our customers," Clayton said. "We can't help those people."

However, the American Bail Coalition says it did not take a position on bail reform in New Orleans. Back at the coffee shop, Sade Dumas explains that the local bail bond businesses threw all of their political weight against the efforts. As the executive director of the Orleans Parish Prison Reform Coalition, Dumas has worked with local activists and national reform groups to slowly chip away at mass pretrial incarceration in New Orleans and has frequently found herself at odds with bail bondsmen as a result. "They see that this movement is coming and is getting stronger and they are changing their strategy and tactics," Dumas says.

As the representative for the insurance underwriters of cash bail, the American Bail Coalition has also butted heads with bail agents and bounty hunters who, in many states, enjoy largely unregulated power to arrest their clients for failing to make payments or show up to court. Reports of **bail agents abusing their clients** while sucking millions of dollars out of poor families have tarnished the industry, including allegations of extortion and kidnapping. Clayton says he wants to "professionalize the arrest process" by placing more requirements on becoming a bail agent, such as background checks and training. However, Professional Bail Agents of the United States, an industry group led by reality-TV star Dog the Bounty Hunter, has pushed back against such reforms in states across the country.

“When you give someone a badge and awesome power [to arrest people], there is going to be a group of people who abuse it, and you have to admit that and take the steps to stop it, and that’s what we need to do as an industry, and I think in certain respects we are probably failing at that,” Clayton says.

Rahman said it sounds like the American Bail Coalition is being “reasonable” because reforms are inevitable and the lucrative industry’s days are numbered. The number of people held in jail in New Jersey dropped by **20 percent** since the state replaced cash bail with a system in which judges use data to assess whether a defendant is a danger to society or a flight risk. Although the new system faces funding challenges, Rahman said reformers elsewhere are taking notice. Bail reform is currently being debated in New York and California, and Alaska recently eliminated bail for most defendants. Researchers expect the reform to reduce Alaska’s prison population by **13 percent and save the state \$380 million**.

However, taking money out of the equation and forcing prosecutors to make a case for detaining defendants is only one piece of the decarceration puzzle. “The other half of the battle is taking incarceration off the table for a much larger set of cases that we currently have,” Rahman says. Bail reform is only working in New Jersey because it comes along with a broader “culture shift” away from pretrial detainment. Bail reform can only do so much if prosecutors continue stacking charges in order to squeeze plea deals and judges fail to think about the actual pros and cons of keeping people who have yet to be convicted behind bars. “That’s where we need to move the fight, and right now, the fight is just about the decision over pretrial release or detention itself,” Rahman says. Bail reform may be in vogue, but it’s no silver bullet for ending mass incarceration.

Speaking to the activists working to free Black women from jail in New Orleans, it’s clear that the bail offices surrounding the criminal courthouse are not the only reason the city has a mass incarceration problem. Public defenders are backlogged and underfunded. Paperwork often goes missing, court dates change and lawyers fail to show up at court appearances. The New Orleans economy has long suffered from high unemployment and low wages, and, as Clayton admits, navigating the criminal legal system is difficult if you don’t have money. Harriet and Dumas say people must often decide between missing a court date and missing a shift at work. “Once you miss one [court date] and a warrant goes out, of course you are scared and don’t want to go back,” Harriet says.

In fact, one of the two women the activists freed from jail in time for Mother's Day was not bailed out. Instead, activists pestered her lawyer to "pick up the phone more" and ask court officials to justify her incarceration. After weeks of advocating for the woman, they finally got a "different answer" from the court system, and she was released to her family without any cash exchange. In the end, bail was not the issue — the woman's case fell through the cracks of a broken system, and she was in no position to advocate for herself as a prisoner. "I have this dream where we are all lawyers, where this knowledge for navigating the system is accessible," Harriet says. The story exposes a central problem with jail: It's a dragnet for people who would quickly benefit from social services or simply having someone in their corner. "Maybe they just need someone to hold their baby while they are in court," Harriet says.

**Harriet asked not to be identified by her real name out of fear that reprisal from local authorities and bondsmen could compromise her efforts to advocate for incarcerated women.*

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Mike Ludwig

Mike Ludwig is a staff reporter at Truthout and a contributor to the Truthout anthology, *Who Do You Serve, Who Do You Protect?* In 2014 and 2017, **Project Censored** featured Ludwig's reporting on its annual list of the top 25 independent news stories that the corporate media ignored. Follow him on Twitter: [@ludwig_mike](https://twitter.com/ludwig_mike).

The Marshall Project



ILLUSTRATION BY SALLY DENG

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[LIFE INSIDE](#)

I Survived a Violent Crime, Then the Justice System Let Me Down

"I was made to feel like a second-class victim."

By PATRICIA WENSKUNAS, as told to [ELI HAGER](#)

This article was published in collaboration with [Vice](#).

It was an April morning when my personal trainer came into my home in Irvine, California, to take a look at the treadmill I'd been planning to sell.

Then he gave me this pill, this little yellow "weight loss" pill, and a chocolate drink.

"What is this?" I asked. "There's something blue in the drink."

He was like, "Oh, don't worry about it. It's probably something in the cup..."

I don't remember much of the next half hour, but do remember vividly what I felt next: I was undressed and in my son's bed. I couldn't get words out of my mouth. I felt like I was under anesthesia.

Before I knew it, my trainer had wrapped my face and head in Saran wrap and was beating me and smashing my head into the wall. He was screaming that he was going to kill me and my son, Nathaniel, who was 12 at the time but, mercifully, wasn't in the house.

"Listen, I'll give you sex," I remember saying. "I'll give you money. I'll give you whatever you want. But please don't kill my baby..."

I don't know if I jumped, if I fell, if he pushed me — I have no idea — but eventually I went over my 12-foot second-floor railing. I landed in the kitchen, and was able to get out the door and run to my neighbor's house to call 911. And then the police showed up along with the paramedics.

At the end of the night, they dropped me off at my friend's house, and my friend and his wife were standing at the door. They say they'll never forget how I looked.

I have blue eyes, but they say that when they saw me that evening, my eyes looked black — as if my soul had left my body.

On that night in 2002, my personal trainer did not murder me. There was also no evidence that he raped me. He didn't steal anything of value from my house, nor were any drugs found in my system other than allergy medication.

Because of all these things, the prosecutor in my case didn't pursue the most serious charges against my assailant, and the judge made me feel like some kind of second-class victim.

I remember, at one point, the DA showing me a blown-up picture of a bloody knife (from one of his murder cases) and saying, "You should take your son to the pumpkin patch. You should go live your life. You survived. I have other cases in which the victims were murdered, and they're no longer here."

I told him, "I wish I would've been murdered, because maybe there would be justice in this case." Obviously I didn't feel that way, or don't feel that way now, but that's what I remember saying.

My first interactions with the system, especially the police, had actually led me to believe that I'd be treated with great respect.

Yes, I had to do a rape kit, which is invasive, and have photos taken of my body multiple times, and get asked all sorts of questions. But the investigator, the detective in my case,

treated me with real dignity. I felt like: Someone's standing up for me, someone's protecting me, there's going to be justice.

I remember hearing him in the hallway, when I was in the emergency room, talking to another officer and saying, "I'm supposed to go to the movies with my wife... You know I was looking forward to that popcorn... But you know what, I think this victim needs me more..."

And when they questioned me, they said, "You know, Patricia. These are going to be some very difficult questions that we have to ask you. It's going to sound like we're doubting or blaming or questioning you, but we're not. We just need to ask these questions so that we can ensure we get an arrest and a prosecution in this case."

Then the court system happened.

One day, I got a call from an officially-appointed victim advocate saying, "Patricia, you need to get to court right away."

I got dressed and quickly made my way to the courthouse, where, upon arriving in a courtroom, I heard, "Okay, sentencing will be..."

I looked at the advocate and asked, "What just happened?" I hadn't been told anything about any of this.

"Oh, don't worry about it, Patricia," she replied. "He admitted to doing everything to you. He signed on the dotted line. And the District Attorney decided to take a two-year plea agreement, so he's going to do two years."

All I remember next is getting up, going out to the corridor, and throwing up.

I couldn't understand or even fathom what had happened — it seemed to be the opposite of how the police had treated me. This man had tried to kill me, threatened to kill my son, and he's just going to "do two years"? I just kept thinking, That's not how it happens on TV. If he gets away with this, he's going to kill someone else, or he's going to come back and kill me and my son...

So I decided to picket the courthouse, gathering a bunch of friends and holding signs up out in the parking lot.

At the next hearing, when the sentencing was going to be officially pronounced, the judge looked at the DA and said, "Well, your victim is here today. She doesn't like you, she doesn't like me. She doesn't like your plea deal. And she's picketing my courthouse. So if she wants a trial, let's give her a trial. I'm going to throw out this plea deal and give the defendant a chance at trial."

But the judge threw out the attempted murder charge, and the jury could only find my personal trainer guilty of misdemeanor assault with a deadly weapon and criminal threats. So he ended up getting only 120 days in jail. And five years of anger management and five years of probation.

Then came restitution, the part of a criminal case when the perpetrator is supposed to make the victim (at least financially) whole.

When I went to provide all my receipts, all my documentation of what I'd spent out of my own pocket because of this crime, the judge scoffed, "You're expecting him to pay for your bed and your sheets and your pillow? Why would I award that?"

"Because he attacked me in my bed. I couldn't keep the mattress, the box spring, the sheets, the pillows. I couldn't sleep there. I threw them in the trash, and I relocated."

"Well, I'm not going to honor that," she said. (Editor's note: California only awards restitution for stolen, damaged or destroyed property, but not long after, the same judge was permanently barred from courtrooms after a state commission determined she had been "abusive and demeaning" to defendants, attorneys, witnesses and prospective jurors.)

I think out of approximately \$54,000 that I'd spent, including moving into a new home because I was so traumatized, I probably got back about \$800 total over the years.

I'll never forget the first restitution check I actually received... for \$54. I remember being in my car at my storage unit, opening up the envelope, thinking: What is this? Then I realized what it was and actually ripped the check halfway in half before I sat there and cried.

I put the ripped check on my dashboard. It sat there for maybe two weeks.

I was so naïve during my court case, much more so than I am today. Surely he's going to go to prison for the rest of his life, I thought. Surely justice was going to make me whole again.

But if they don't want to see me as a victim, I won't either. I'll be a survivor and thrive.

Patricia Wenskunas is a resident of Irvine, California, and the CEO/Founder of Crime Survivors, an organization that seeks to empower and advocate for crime victims.

THE WALL STREET JOURNAL.

ECONOMY CAPITAL ACCOUNT

How Google and Facebook Are Monopolizing Ideas

An ad ban for bail-bond companies raises the question whether it's fair that an entire industry can be kicked out of a major advertising channel



Bail-bond locations outside the East Baton Rouge Parish Prison in Baton Rouge, Louisiana. Facebook and Google have banned ads from such companies from their platforms. PHOTO: SHANNON STAPLETON/REUTERS

By Greg Ip

July 4, 2018 10:05 a.m. ET

In early May Google banned bail-bond companies from advertising on its platforms. Such companies profit from “communities of color and low income neighborhoods when they are at their most vulnerable,” it [explained in a blog post](#). They use “opaque financing offers that can keep people in debt for months or years.”

That Google can ban ads from an industry that offends its values is not, by itself, noteworthy. Media companies have long decided what content or ads to carry for the

same reason. The difference is that even after decades of consolidation, no media company enjoys a U.S. market share as dominant as Google's in Internet search (close to 90%) or [Facebook](#) Inc.'s in social networking. Like earlier bans on payday-loan ads, Google's bail-bond ad ban, which Facebook copied the next day, effectively kicked an entire industry out of a major advertising channel.

The debate over whether Google, a unit of [Alphabet](#) Inc., and Facebook are too big usually revolves around economics: Do they suppress competition for goods and services? The bail-bond ad ban raises a different, and potentially more troubling, possibility: that they also undermine competition for values and ideas. While Google and Facebook claim to be neutral platforms connecting users, advertisers and content providers, decisions about which ads to ban and which content to delete or reclassify are inherently value-laden, even when those values are embedded in an algorithm.

Data monopolies “can actually be more dangerous than traditional monopolies,” Maurice Stucke, a law professor at the University of Tennessee, Knoxville specializing in antitrust, [wrote earlier this year](#) in Harvard Business Review. “They can affect not only our wallets but our privacy, autonomy, democracy, and well-being.”

Bail bonds aren't a sympathetic industry. For a steep fee, agents agree to pay the court's required bail if the client doesn't show up for a court date. They are, however, legal and, in most states, regulated. And the industry says it serves low-income and minority clients because they are caught up in the criminal-justice system without the means to post bail on their own.

Jeff Clayton, executive director of the American Bail Coalition, whose members insure bail agents, says Google gave the industry no opportunity to comment on or appeal the ban. A Google spokeswoman declined to comment. Facebook did consult with both the industry and criminal-justice-reform groups after announcing its ban, a spokesman said.

Bail-bond agents used to advertise in the yellow pages, but as the public abandoned phone books for Google, so did the industry. “There are just no other options,” Mr.

Clayton said. The ban doesn’t extend to regular search results, but it makes it harder for individual companies to stand out.

Conservatives tend to see tech companies’ progressive leanings at work in what gets banned or reclassified—for example, Facebook’s labeling of videos by two prominent supporters of President Donald Trump as “unsafe.” Bail bonds and payday loans have long been targets of progressive activist groups.

But as the companies come under growing pressure to police their platforms and weed out “fake news,” a growing range of content gets banned, labeled or deleted for often opaque or arbitrary reasons. ProPublica and Reveal, both nonprofit news publications, have had content dealing with hate groups and immigrant children, respectively, deleted or rejected by Instagram or Facebook. Video artists complain of viewership and ads being restricted because their content violated YouTube’s community standards.

Unhappy users, advertisers and content providers wouldn’t have as much to complain about if Google (which bought YouTube in 2006) and Facebook (which acquired Instagram in 2012) had strong competitors to which they could switch.

Absent such competition, expect pressure for the government to regulate it. But that’s a slippery slope. Politically appointed overseers may simply replace the companies’ judgments with their own. For that reason the Federal Communications Commission long ago gave up policing the nation’s airwaves for fairness.

Better that monopolies not arise in the first place. In a 2001 article Mr. Stucke and Allen Grunes, then attorneys in the Department of Justice’s antitrust division, noted antitrust law has long sought to preserve competition in ideas, not just products. In 1945 the Supreme Court upheld a landmark antitrust suit against the Associated Press for excluding some newspapers and limiting what member newspapers could share. The First Amendment “rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the

public,” Justice Hugo Black wrote. “Truth and understanding are not wares like peanuts or potatoes,” Justice Felix Frankfurter added.

This isn’t necessarily a reason to break up tech giants: The legal hurdles are almost insurmountable and the consequences highly unpredictable. It is a reason to ask, when these companies announce their next acquisition, if the market for ideas, not just for peanuts and potatoes, will be stronger as a result.

COURIER-POST

South Jersey's Newspaper | courierpostonline.com

Federal appeals court upholds NJ bail-reform measures

[Jim Walsh](#), Cherry Hill Courier-Post Published 1:36 p.m. ET July 9, 2018 | Updated 6:56 p.m. ET July 9, 2018

PHILADELPHIA - A federal appeals court Monday upheld New Jersey's bail reforms in a case that grew out of a bar fight between football fans in Winslow.

The three-judge panel, which found no constitutional right to monetary bail, declined to block changes that have sharply reduced the number of pretrial detainees since January 2017.

The new bail system "scores" defendants based on factors that include criminal records, risk of flight and the likelihood of future violent crimes.

The 52-page decision upheld a lower-court ruling against Brittan Holland, a Sicklerville man charged with aggravated assault in April 2017, and Lexington National Insurance Corp., a Maryland firm that underwrites bail bonds.

The plaintiffs had sought an injunction against bail-reform measures while they pursued a proposed class-action lawsuit.

Monday's ruling was praised by the American Civil Liberties Union of New Jersey, which noted the state's pretrial jail population fell 24 percent between the onset of reforms and April 30, 2018.

"There is no reason - legal or otherwise - why the thickness of anyone's wallet should dictate their liberty and freedom," said Alexander Shalom, senior supervising attorney at the ACLU-NJ.

But a representative of a bail-industry group vowed to keep fighting.

"This case is far from over and may end up at the U.S. Supreme Court," said Jeff Clayton, executive director of the American Bail Coalition.

He asserted the ruling said "there may be other viable challenges to the Bail Reform Act and the implementation of the Act."

Paul Clement, a Washington, D.C., lawyer who is the plaintiffs' lead attorney, could not be reached for comment. Clement formerly served as solicitor general under President George W. Bush.

A spokesman for the state Attorney General's Office declined to comment.

U.S. District Judge Jerome Simandle in Camden initially declined to grant an injunction in a September 2017 ruling. Among other findings, he said the plaintiffs had not showed they would suffer irreparable harm if reforms remained in place during their lawsuit.

Monday's decision from the Third Circuit Court of Appeals in Philadelphia shared that view, noting Holland "has not demonstrated a sufficient likelihood of success on the merits of his argument."

Holland, described as a Dallas Cowboys fan, was arrested after he allegedly assaulted two men at Joe's Tavern on Williamstown Road in Sicklerville, according to the Camden County Prosecutor's Office.

He was accused of striking one patron in the face in the parking lot, then continuing to beat the man after he fell to the ground. The tavern owner's adult son suffered a broken nose during the incident, authorities said.

"Holland then fled the scene and was apprehended at his home with his clothing covered in fresh blood," Monday's ruling said.

The decision noted the prosecutor's office initially sought pretrial detention for Holland, citing the severity of the alleged attack and a prior conviction from simple assault.

It said Holland, represented by a public defender, then agreed to home detention and electronic monitoring.

In his decision, Simandle expressed "serious doubts" that Holland was an "appropriate plaintiff" for the court challenge, noting he had voluntarily accepted the terms of his release.

Simandle said Holland may have received "less stringent" conditions if he had risked a pretrial detention hearing.

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New Jersey's national model for bail reform gets boost from appeals court

James Nash, NorthJersey Published 2:18 p.m. ET July 9, 2018 | Updated 6:13 p.m. ET July 9, 2018



Mahwah Police Chief James Batelli discusses N.J.'s new bail reform system's shortcomings. Matt Fagan/NorthJersey.com

New Jersey lawmakers and then-Gov. Chris Christie were within their rights to do away with cash bail for most criminal defendants and instead allow judges to decide whether to detain them before trial, a federal appeals court ruled Monday.

The 3rd U.S. Circuit Court of Appeals upheld a key provision of the state bail reforms that took effect in January 2017, rejecting arguments from the bail-bond industry that the new system has unleashed dangerous criminals in the community and added to the costs of jailing.

"This important decision confirms what bipartisan lawmakers in New Jersey have known for years: there is no reason — legal or otherwise — why the thickness of anyone's wallet should dictate their liberty and freedom," Alexander Shalom, senior supervising attorney for the New Jersey chapter of the American Civil Liberties Union, which submitted a friend-of-the-court brief in the case, said in a statement.

New Jersey's criminal justice law, passed in 2014 and signed by Christie, eliminated the right of most criminal defendants to get out of jail before trial by posting bail with cash or paying a bond

agent a nonrefundable 10 percent deposit. Instead, judges would use a scorecard that considers the likelihood of a defendant to show up for trial and the risk to the community in deciding whether to keep the person locked up pending trial.

Christie and lawmakers said requiring defendants to come up with hundreds of dollars or spend weeks in jail before a trial discriminated against people of limited means. New Jersey State Supreme Court Chief Justice Stuart Rabner cited a 2012 study that found one in eight inmates in New Jersey's county jails were held there because they could not pay \$2,500 or less in bail.

The bond industry challenged the new law, saying it violated a criminal defendant's constitutional right to bail. A Camden County football fan who was forced to wear a GPS-tracking ankle bracelet and submit to home detention when he was arrested after a bar fight led the challenge to the law. Under the former law, he said, he could have paid bail and avoided restrictions on his whereabouts.

The fan, Brittan Holland, was supported by Lexington National Insurance Corp., a Maryland company that does business with the bail-bond industry.

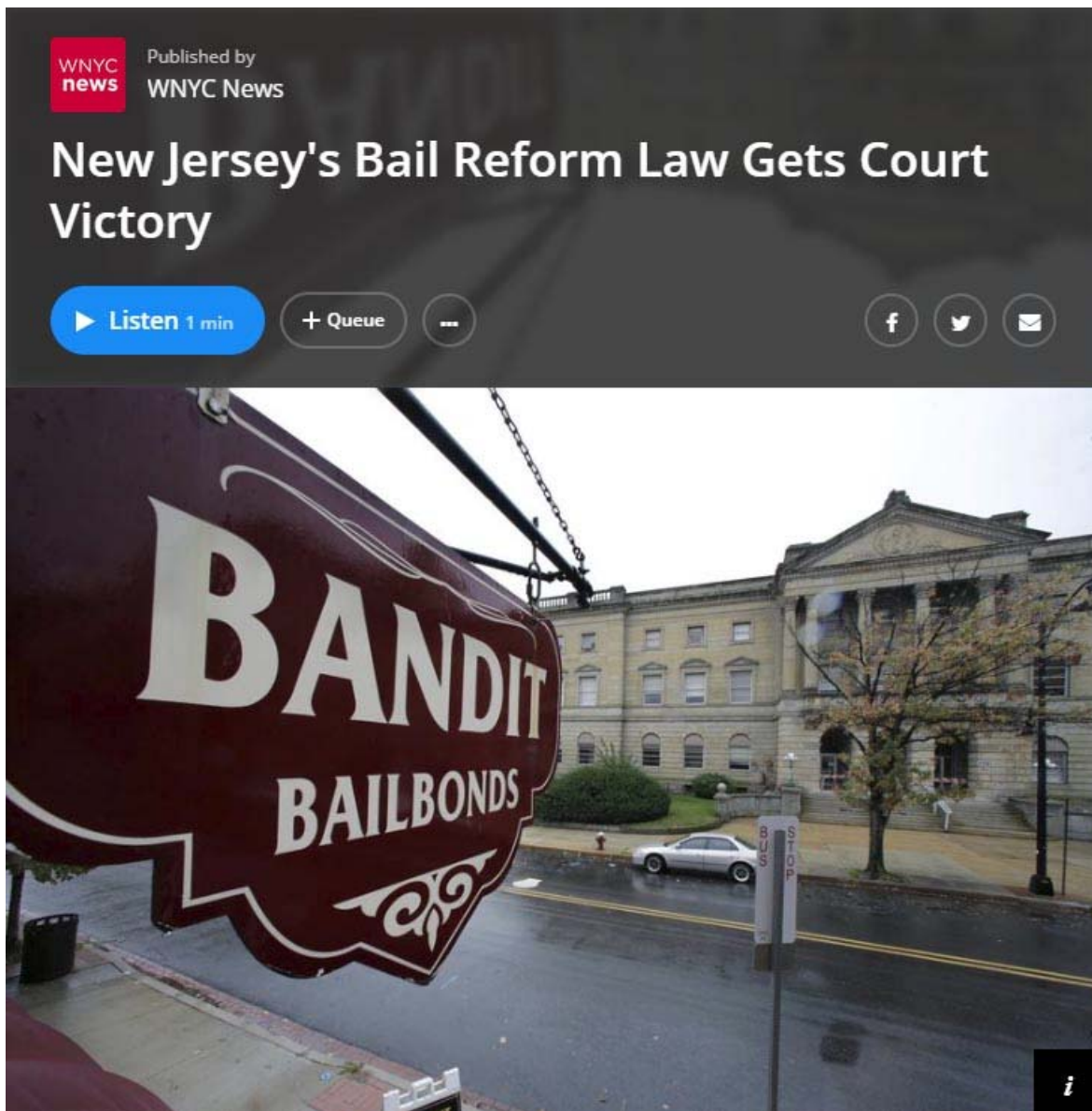
No state has gone as far as New Jersey in replacing cash bail with a scorecard intended to assess the risk of a defendant fleeing or reoffending, said Jeff Clayton, executive director of the American Bail Coalition, which represents the industry. The coalition this month hailed inaction by the state legislatures in New York and Delaware on similar reforms.

"The rash of unaccountable releases resulting from bail reform has been no secret in the Garden State — and when you add the failing Arnold risk assessment tool, the lack of transparency in reporting the performance of the new law, and the burden on taxpayers with the Judiciary now requesting millions more to fund the program, it's pretty clear why legislators would give pause to enacting similar legislation," Clayton said in a statement.

In an interview, Clayton, whose coalition was not a party to the case on which the appeals court ruled Monday, said he hopes the U.S. Supreme Court weighs in on the issue. He said the appeals court ruling gives judges "sweeping" power to impose GPS monitoring and home detention.

A second lawsuit seeking to derail the New Jersey bail reform law is also pending in federal court. That case involves June Rodgers, whose son was allegedly murdered in April 2017 by a man who was arrested days earlier for unrelated crimes but released under the new law.

Statehouse Reporter Nicholas Pugliese contributed to this article.



Jul 9, 2018 · by [Rebeca Ibarra](#)

In a blow to the commercial bail-bond industry, a federal appeals court has upheld the constitutionality of New Jersey's ambitious effort to do away with cash bail.

The Criminal Justice Reform Act [went into effect in January 2017](#), eliminating cash bail for most criminal defendants. A few months later, the bond industry challenged the law on behalf of a man charged in a bar fight who was forced to wear an ankle monitor instead of paying bail like he preferred.

The lawsuit, filed by Brittan Holland and the Lexington National Insurance Corporation, claimed defendants have a constitutional right to pay to get out of jail. But the United States Courts of Appeals for the Third Circuit [ruled against them Monday](#).

"Under the old system, they were making [money] hand over fist at the expense of justice and at the expense of fairness," Alexander Shalom, a senior supervising attorney at the [ACLU of New Jersey](#) told WNYC.

The ruling hit an already struggling business.

"The [bail] industry's pretty much been taken out," Jeff Clayton, executive director for the [American Bail Coalition](#), told WNYC. "On the other hand, the state hasn't coughed up anything that would allow anybody to conclude that it's worked or been worth the money that's been spent to implement it."

The state's pre-trial population dropped about 20 percent after the law went into effect, but Clayton said the number of inmates began decreasing before that because of other criminal justice reforms, like modernizing how drug cases are handled.

But ACLU's Shalom said the results are worth it.

"It's true that the [bail] industry is taking a beating, but the cause of justice and the cause of fairness are doing much better," he said.

In the Third Court's opinion, judge Thomas Ambro wrote "monetary bail often deprived presumptively innocent defendants of their pretrial liberty, a result that surely cannot be fundamental to preserving ordered liberty."

Ambro cited a 2013 report that found about 12 percent of inmates were in jail because they couldn't afford to pay a bail of \$2,500 or less. Their median length stay in jail was almost a year.

In 2014, a committee of judges, prosecutors and attorneys found the state's bail practices resulted in the release of people with money, regardless of their danger to others. Poorer defendants, on the other hand, often languished in jail for lesser crimes, increasing their likelihood of pleading guilty.

A second lawsuit, brought by a woman whose son was allegedly murdered by a man released under the bail reform act, is currently pending in federal court.

Cowboys fan arrested in bar fight challenged N.J. bail overhaul. Here's how a judge ruled.

Updated 9:44 AM; Posted 9:44 AM

By [S.P. Sullivan](#)
ssullivan@njadvancemedia.com,
NJ Advance Media for NJ.com

The sweeping overhaul of New Jersey's criminal justice system that took effect last year has survived another legal challenge after a federal appeals court ruled it did not violate the constitution.

The opinion, handed down Monday, upholds the Garden State's move away from cash bail, though its opponents said they were considering taking the matter to the U.S. Supreme Court.

The case that sparked the year-long legal fight involved a bar fight over the [Philadelphia Eagles](#). A Camden County man, Brittan Holland, was arrested in April 2017 on aggravated assault charges stemming from a brawl between football fans at a local tavern. Holland is a Cowboys fan, according to the police records. A year earlier, Holland would have likely posted bail to await trial. But in January 2017, New Jersey nearly eliminated cash bail, moving instead to a set-up where judges, guided by a risk assessment algorithm, can order defendants locked up or subjected to varying degrees of monitoring based on their risk of flight or danger to the community.

Bail reform is running out of money

Holland was released pre-trial, but was ordered to wear a GPS monitoring bracelet and check in regularly with the court. His case was taken up by the bail bonds industry, which helped him file a class-action suit claiming the ankle bracelet was a "scarlet letter" that violated his rights before he had his day in court.

In a 52-page decision on released Monday, a two-judge panel in the third circuit of the U.S. Court of Appeals wrote that the fundamental issue in the case was whether cash bail was a fundamental right enshrined in the constitution.

"Our answer is no," the judges found, later writing that the move from cash bail to the new system was "rationally related" to the state's interest "in assuring defendants appear at trial, the safety of the community and other persons, and the integrity of the criminal justice process."

The ruling swats away one of several challenges to the new system, which has been held up as a national model because it is meant to keep fewer low-level offenders locked up simply because they cannot afford bail.

It has also faced sharp criticism over the release of defendants charged with gun offenses and domestic abuse, among other charges, who were accused of similar crimes while awaiting trial. The state also **faces a looming funding crisis** for its new pre-trial monitoring system.

The decision was hailed by civil liberties advocates who supported New Jersey's bail overhaul, which was pushed by former Republican Gov. Chris Christie and supported by Democratic leaders in the state Legislature.

Jeff Clayton, the executive director of the American Bail Coalition, said the case was "far from over," adding that the plaintiffs would decide whether to bring the matter back to the trial court or ask the Supreme Court to take a look.

Alexander Shalom, a senior attorney at the New Jersey chapter of the American Civil Liberties Union, said the decision re-affirmed the core purpose of the overhaul.

"There is no reason -- legal or otherwise -- why the thickness of anyone's wallet should dictate their liberty and freedom," Shalom said.

S.P. Sullivan may be reached at ssullivan@njadvancemedia.com. Follow him on [Twitter](#). Find NJ.com on [Facebook](#).

Federal Court Upholds New Jersey's Bail-Eliminating Pretrial Reforms

No constitutional right to pay cash for freedom if there are alternatives

Scott Shackford | Jul. 10, 2018 3:30 pm



You don't have a constitutional right to a cash bail if courts use other methods to monitor and release defendants before their trials.

So ruled a federal appeals court Monday in a challenge to New Jersey's recent bail reforms. The lawsuit was filed by a defendant charged with assault last year—and was supported by an insurance firm that underwrites bail bonds.

New Jersey has [almost completely stopped using cash bail](#)—where defendants have to front money, typically through a bail bondsman—to determine who is released and who remains in pretrial jail detention. Instead,

New Jersey courts use an extensive pretrial assessment system that calculates a defendant's public safety risks, drawing on his or her past conduct and on the nature of the charges. The court can then establish terms of monitoring for release, requiring defendants to check in with the courts on a regular basis and to accept an assortment of nonfinancial conditions for freedom. If the courts believe that someone presents an unsurmountable public safety risk, a judge can order the defendant to be jailed until trial. But money is no longer a consideration.

This has resulted in a 20 percent drop in pretrial detention. It has also, unsurprisingly, decimated the Garden State's bail bonds industry.

The person who filed the suit, Brittan Holland, got into a bar fight and was arrested and charged with aggravated assault. The prosecutor and the court's assessment system recommended that he be detained in jail due to the severity of the offence and his previous assault conviction. But after negotiations, everybody agreed to home detention and electronic monitoring instead.

Holland—supported by Lexington National Insurance Corp., a bail bond underwriting firm—then sued to stop New Jersey's bail changes. He argues that denying him the possibility of cash bail violated his Eighth Amendment right prohibiting excessive bail and his Fourth Amendment and Fourteenth Amendment due process rights.

The U.S. Court of Appeals for the Third District [rejected these arguments](#). The three-judge panel ruled that the insurance company lacked standing to challenge the law. Holland can, but the court determined that there's no constitutional "right" to use money or a surety bond as a condition for pretrial release, and they don't think his challenge is likely to succeed.

To be clear, they're not saying that people don't have a constitutional right to seek pretrial release. Rather, the court ruled that there's nothing in the history of Eighth Amendment jurisprudence that requires that cash bail must be one of the mechanisms available to make sure people show up for their trials. It noted, in fact, that the development and expansion of cash bail in the United States over the past century has frequently accomplished the opposite of facilitating pretrial release:

Monetary bail often deprived presumptively innocent defendants of their pretrial liberty, a result that surely cannot be fundamental to preserving ordered liberty.

As a result, we hold cash bail and corporate surety bond are not protected by substantive due process because they are neither sufficiently rooted historically nor implicit in the concept of ordered liberty.

And those Fourth Amendment claims? Holland argued that demanding electronic monitoring in exchange for his freedom was overly intrusive on his privacy when compared to shelling out money to a bail bondsman to make sure he showed up for trial. The court replied that monitoring criminal defendants doesn't need to be the least intrusive choice, merely a reasonable one.

The ruling is a victory for bail reformers looking to spread New Jersey's system to other states. It's important to note, though, that the court favored the reforms pretty much because they are working.

They mean fewer people are being detained simply because they're poor. And the defendant in this case wasn't even somebody who was being held in jail. Other communities attempting to follow in New Jersey's footsteps are sometimes seeing different results. In Maryland, unfortunately, they're getting more [pretrial detention](#).

Jeff Clayton, executive director of the American Bail Coalition, released a statement disagreeing with the decision while acknowledging that maybe Holland wasn't the best defendant to challenge the law. Clayton said Holland's team will soon decide whether to push the case forward to trial or to try to appeal to the U.S. Supreme Court.

For more information about both the bail reform movement and how New Jersey's courts work under the new system, check out my Reason cover story in the [August/September issue](#), hitting newsstands right now.



NATIONAL

Appeals Court Rules In Favor Of New Jersey's Bail Overhaul

July 10, 2018 5:06 AM ET

Transcript

RACHEL MARTIN, HOST:

The state of New Jersey is dodging a major legal challenge to its criminal justice system. A federal appeals court ruled that New Jersey was within its rights to virtually eliminate cash bail last year. Instead, the state began to evaluate criminal defendants based on the risk they pose to the public. Now other states are using New Jersey as a model. Here's Joe Hernandez from member station WHYY.

JOE HERNANDEZ, BYLINE: In April of last year, police charged a South Jersey man named Brittan Holland with aggravated assault for his alleged role in a bar fight after a Philadelphia Eagles game. This was well into New Jersey's cash bail overhaul, so instead of issuing money bail, a judge sent Holland home, put him on house arrest and made him wear a GPS monitor. Holland sued the state, saying he had a constitutional right to pay cash bail and go free before trial, no strings attached. But on Monday, a federal appeals court in Philadelphia ruled against him, saying there's no guarantee in the law that Holland get the option of money bail. The court said New Jersey's cash bail overhaul, which Holland wanted to stop, can keep operating.

ALEX SHALOM: We think the court did exactly what we expected them to do because it's what every judge who has looked at this case has done.

HERNANDEZ: Alex Shalom is a senior staff attorney with the ACLU of New Jersey.

SHALOM: ...Which has said that New Jersey was not only constitutionally permitted to do what they did, but they were wise to do what they did because the former system was a miscarriage of justice.

HERNANDEZ: Under the former system, most criminal defendants got money bail, but many poor defendants couldn't afford it. That's when New Jersey basically scrapped

cash bail and instead began releasing low-risk defendants with some supervision. It also means judges could keep the most dangerous offenders in jail. While supporters have hailed the state's shrinking jail population, critics in the bail bonds community say the law has made New Jersey less safe, and it's killed their business. Jeff Clayton is executive director of the American Bail Coalition

JEFF CLAYTON: What we're seeing is a lot of guys looking for either to move or to go into other lines of business, and they're just questioning whether the policy has worked.

HERNANDEZ: The state plans to release data on the new system's effectiveness this year. Although the court denied Holland's motion for an injunction against the state, his case can still proceed. And there are other legal challenges pending, too, which means the final word on New Jersey's effort to scrap cash bail is yet to come. For NPR News, I'm Joe Hernandez.

(SOUNDBITE OF KORESMA'S "BRIDGES")

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New Jersey Law Journal

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3rd Circuit Shackles Constitutional Challenge to NJ Bail Reform Law

The appeals court, in a precedential ruling, said the plaintiffs were not entitled to a preliminary injunction halting implementation of the law.

By **Charles Toutant** | July 09, 2018 at 04:18 PM



Thomas Ambro

A constitutional challenge to New Jersey's Criminal Justice Reform Act by a bail bonds underwriter and a criminal defendant [was rejected Monday by the U.S. Court of Appeals for the Third Circuit.](#)

The appeals court, in a precedential ruling, said the plaintiffs were not entitled to [a preliminary injunction halting implementation of the law.](#)

The panel ruled that Lexington National Insurance Co. lacked standing to challenge New Jersey's 2017 reform of its cash bail system. It also said that plaintiff Brittan Holland, who is under electronic monitoring while awaiting trial on an aggravated assault charge, does have standing to challenge the law, but failed to demonstrate a likelihood of success on his assertion that bail reform violates his rights under the Fourth, Eighth and 14th amendments of the U.S. Constitution.

Because of the procedural posture, the Third Circuit ruling does not bring an end to the litigation, but opens the door for the state to file a motion to dismiss.

According to the decision, Lexington National underwrites bail bonds in New Jersey, and acknowledged in court papers that its business in New Jersey has dwindled under the new law. Holland, a Sicklerville resident, was arrested in April 2017 and placed on home detention after he was charged for his involvement in a bar fight, the court noted.

Monday's decision came after Holland and Lexington National appealed a [ruling by U.S. District Judge Jerome Simandle that denied their application for a preliminary injunction](#) to halt implementation of the bail reform law, which has been in effect since January 2017. Judges Thomas Ambro, L. Felipe Restrepo and Julio Fuentes said Simandle correctly denied Holland's motion for a preliminary injunction.

Simandle ruled that Lexington National lacks standing to bring a claim on its own behalf, or to bring a claim on behalf of third parties. Lexington National did not challenge the denial of first-party standing, but argued on appeal that it should be granted third-party standing to bring claims on behalf of criminal defendants on home detention and electronic monitoring because those individuals face obstacles in bringing claims.

Ambro, writing for the panel, rejected that assertion, finding that Holland "appears to have the unfettered ability" to pursue litigation.

Holland raised the issue of whether there is a federal constitutional right to deposit money or obtain a corporate surety bond to ensure a criminal defendant's future appearance in court as an equal alternative to nonmonetary conditions of pretrial release.

The appeals court, affirming the judge below, said there is no such right. The panel rejected Holland's reasoning that the revamped bail system violates the Fourth Amendment's prohibition on unreasonable searches and seizures because home detention and monitoring intrude on his privacy and are not needed to promote the state's legitimate interest. Ambro rejected Holland's claim that placing an electronic monitor on a person and tracking his whereabouts necessarily constitutes a search and seizure, or that home detention is a seizure.

The appeals court conceded that home detention and wearing an electronic monitor are "at least somewhat intrusive" but found that the intrusion is "lessened by Holland's reduced expectation of privacy." When a person is arrested on probable cause for a dangerous offense, his expectations of privacy and freedom from police scrutiny are lessened, Ambro wrote.

The American Civil Liberties Union submitted an amicus curiae brief to the Third Circuit on behalf of itself, its New Jersey chapter, Drug Policy Alliance, Latino Action Network, and the National Association for the Advancement of Colored People.

"This important decision confirms what bipartisan lawmakers in New Jersey have known for years: there is no reason—legal or otherwise—why the thickness of anyone's wallet should dictate their liberty and freedom," Alexander Shalom, senior supervising attorney at the ACLU-NJ, said in a statement.

In a phone interview, Shalom added that the plaintiffs' next steps might be to seek review by the entire court, or to ask the U.S. Supreme Court to take the case. But barring that, the state is likely to file a motion to dismiss the case, according to Shalom.

Both the District Court and the Third Circuit "have made it clear they don't think there's a 'there' there on the legal theory the bail industry has put forth," that a defendant awaiting trial has the constitutional right to buy his freedom, Shalom said.

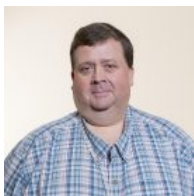
"I think the bail industry had an uphill battle before. They have a Sisyphean task now," he said.

Jeff Clayton, executive director of a group called the American Bail Coalition, said in a statement, "While this challenge to New Jersey's bail system has faced another hurdle, this case is far from over and may end up at the U.S. Supreme Court. The Court of Appeals also noted that while there may be other viable challenges to the Bail Reform Act and the implementation of the Act, Plaintiff Holland was the wrong plaintiff to bring those challenges."

Paul Clement of Kirkland & Ellis in Washington, D.C., who served as U.S. solicitor general under President George W. Bush, represented Holland and Lexington National before the Third Circuit. He did not return a call about the ruling. Co-counsel Michael Williams, also of Kirkland & Ellis, and local counsel Justin Quinn, of Robinson Miller in Newark, also did not return calls.

The state's case was argued at the Third Circuit by Assistant Attorney General Stuart Feinblatt. A spokesman for the Attorney General's Office, Lee Moore, declined to comment on the ruling or to address whether the state would next file a motion to dismiss.

Charles Toutant



Charles Toutant is a litigation writer for the New Jersey Law Journal.

NATION

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Court Upholds Bail Reform Law In System That's Biased Against Blacks

The ruling provides a court-approved reform model that other states can follow.



Written By [Nigel Roberts](#)
Posted 10 hours ago

A movement to end the cash bail system that is used across the nation received a major boost Monday through a federal court decision.

The United States Courts of Appeals for the Third Circuit upheld the constitutionality of a New Jersey law that reformed the state's bail system, **WNYC** reported. At the same time, the ruling provided a court-approved reform model that other states could follow.

In their **ruling**, the judges acknowledged that New Jersey instituted the reforms to address inequalities—also found in other states—that kept poor people behind bars for nearly a year on average, while awaiting a hearing because they couldn't afford to pay bail of \$2,500 or less.

African-American are disproportionately harmed by cash bail systems, **David Hall**, the senior criminal justice attorney for the Southern Coalition for Social Justice, wrote in the **News & Observer**. Nationally, Blacks get detained in jail at nearly five times the rate as whites. Moreover, African-Americans aged 18 to 29 typically receive significantly higher bail amounts than other defendants.



New Jersey passed its Criminal Justice Reform Act in 2014, and it went into effect three years later. It replaced the cash bail or bond method of releasing most criminal defendants with a scorecard system. Under the revamped method, judges decide whether to release defendants based on impartial factors that predict the likelihood of a defendant appearing for trial and the safety risk to the community, according to [NorthJersey.com](https://www.northjersey.com).

New Jersey has the most comprehensive bail reform law, **Jeff Clayton**, a spokesman for the bail bond industry, told WNYC. Meanwhile, activists are [pushing for bail and pretrial reforms](#) across the nation, and some progressive local governments are instituting reforms. In Atlanta, for example, Mayor **Keisha Lance Bottoms** [signed an ordinance](#) in February that eliminated cash bonds for release from the City of Atlanta Detention Center.

MADHOUSENEWS

Innocent Until Proven Guilty, But Only If You Can Pay

Published on July 16, 2018

By [Michael Parsons](#)



“I did something stupid, and something I shouldn’t have done” are the first words of Bill Peyser’s tale of how he ended up getting arrested and jailed for the first time in his life at the age of 73.

Peyser, a San Francisco cab driver, says he had been frustrated with a couple of noisy younger neighbors in the spring of 2017. Exhausted and angry after a sleepless night that had led to him skipping a day of work, he decided to confront them on the afternoon of April 17.

The “something stupid” that Peyser agrees he shouldn’t have done was to bring a .22-caliber handgun with him when he went to their apartment.

Though the men did not answer the door when Peyser repeatedly kicked it, they saw him through the peephole and called the police. There was no direct confrontation, but as Peyser was leaving, he fired the gun by accident while trying to uncock it in the hallway. According to one of Peyser’s attorneys, the bullet lodged in a wall in the lobby of the building a few inches off the floor. Nobody was hurt.

The police came and arrested Peyser. Peyser explained what happened, but he says police refused to believe it was an accident and insisted he was trying to harm his neighbors. He says he was prepared to plead guilty to what he had done—brandishing a weapon. But when he was brought before the court, he found he was being charged with attempted murder, two counts of assault with a semi-automatic firearm, and discharging a firearm at an inhabited dwelling.

What happened to Peyser next illustrates a chronic problem, one civil rights advocates are attempting to force states and counties to address. Peyser ended up stuck in jail for six months while awaiting his trial not because he was a threat to society—he was a septuagenarian with no criminal record who hadn’t actually injured anyone—but because he didn’t have enough money to pay for bail. Activists argue that cash bail systems violate the rights of people like Peyser who have been charged, but not convicted, of crimes. More and more, judges, lawmakers, and even prosecutors are starting to agree.

Peyser’s bail was set at \$625,000, based on the schedule for his alleged crimes. The attempted murder charge was later dropped, but the bail didn’t change. If Peyser wanted to fight these charges from outside of a jail cell, he needed to either cough up cash or pay a bail bondsman a portion of the cost (typically 10 percent) to front the money for him.

Peyser did not have that much. He qualified for representation by a public defender because he was considered indigent. He and his defense attorneys tried to get multiple judges to reduce his bail, pointing out his stellar record and the possibility of losing both his taxi medallion and his rent-controlled apartment. He had turned the gun over to police and didn't want it back. He promised to stay away from the neighbors.

No dice. He would spend half a year in jail until his case was heard in October, at which point the jury watched the security footage of what happened, deliberated, and found him not guilty on all counts. "It looked like an old man doing something stupid," says one juror, speaking to *Reason* on condition of anonymity. The charges—which required proof of intent—didn't match what they saw.

"This is not a violent guy who needs to be put away," the juror says. Yet just months before, a judge had insisted that Peyser represented a public safety threat and a flight risk due to the severity of his charges—he faced a possible sentence of 19 years in jail—as justifications for his remarkably high bail.

"Both judges accused me in open court of being a menace to society and one added that I was a threat to public safety," Peyser says. "And mind you, there had been no trial."

If Peyser had had the money, he would have been treated completely differently. "If you tell the judge you can't pay the bail, the judge drops any pretense whatsoever of impartiality," he says. "If you pay the bail, you're a regular citizen. If you don't pay the bail, you're treated as guilty until you're proven innocent."

Even though Peyser was ultimately exonerated, the whole incident imposed a steep cost. He had to give up his taxi medallion and is no longer working. His landlord also started proceedings to evict him, though he was eventually able to convince the landlord to let him stay.

Peyser's defense attorney, Chesa Boudin, wanted to use his case to challenge the constitutionality of California's money bail system. Boudin is on the board of the Civil Rights Corps, a non-profit legal group that uses litigation to try to overturn what its members see as court and detention mechanisms that disproportionately and unfairly hurt the poor and disenfranchised.

Boudin wasn't successful with Peyser, but in January, a state appeals court in San Francisco sided with the Civil Rights Corps in another case. "A defendant may not be imprisoned solely due to poverty," the three-judge panel ruled.

In that instance, a 63-year-old man was being detained, unable to pay the \$350,000 bail demanded for allegedly breaking into an elderly neighbor's apartment, threatening him, and stealing \$5 and a bottle of cologne.

"The problem this case presents does not result from the sudden application of a new and unexpected judicial duty," the judges noted after ordering a new bail hearing for the man. "It stems instead from the enduring unwillingness of our society, including the courts...to correct a deformity in our criminal justice system that close observers have long considered a blight on the system."

The days of judges deferring to fixed bail schedules, which are established by city and county governments and set dollar amounts based on the severity of charges, may be coming to an end. The days of money bail itself may even be numbered. California lawmakers are considering whether to remake the state's pretrial system so that money is not a consideration in determining who remains behind bars prior to actually being tried. The state's chief justice and attorney general have declared support for such reforms. If California follows through, it'll be joining such states as New Jersey, which started a similar transition in 2016, and Alaska, which launched reforms earlier this year.

In the meantime, groups like the Civil Rights Corps are keeping the legal pressure on. Prior to the January ruling, the group had found success in Harris County, Texas, home of Houston. In 2016, it filed suit against the county's bail practices, arguing that the reliance on bail schedules to determine who was freed pretrial left 500 people stuck in jail each night for misdemeanors solely because they couldn't pay—not because they were dangerous or posed a flight risk. The group

argued this violated the defendants' equal protection and due process rights. In April 2017, a little more than a week after Peyser was arrested, a federal district judge agreed and ordered the county to start releasing indigent defendants.

Harris County officials are now grappling with the need to make changes to their pretrial detention system as subsequent rulings made it clear that the courts had come to a dim view of using bail schedules as the sole determinant of who ends up stuck behind bars.

Even a small amount of jail time can cause huge disruptions in the lives of the accused. The Pretrial Justice Institute was founded in 1976 with the help of Department of Justice funding to research and advise on policies for the treatment of people who have been arrested but not yet tried. Years of data and analysis have determined that three days in jail is all it takes to cause serious problems. When courts tie defendants' pretrial freedom to money bail, it ends up being a form of punishment for those who cannot pay, *prior* to any conviction.

His bail was set at \$625,000 based on the schedule for his alleged crimes. He did not have that much. He spent half a year in jail before the case was heard, at which point he was found not guilty.

"When those folks managed to get out, [their] jobs were gone," explains Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute. "It makes it impossible to make rent or mortgage payments. Families lose homes. It has an almost instantaneous detrimental effect on people's lives."

And there are a lot of these people in America, the world leader in incarceration. According to a 2018 study in the *American Economic Review*, half a million people in the country are being detained before their trial on any given day—nearly twice as many as in China. The report cites the use of money bail as a driving factor, noting that the typical defendant is poor. Less than half of them can afford bail even when it's set at under \$5,000.

When defendants are stuck in jail while awaiting trial, data indicate they're more likely to plead guilty or be found guilty of crimes. They're also likely to be given longer prison sentences. This is partly a result of their not being in a position to bargain with prosecutors, because they're stuck behind bars and desperate to move things along.

For low-level crimes, all that time spent in pretrial detention can be equivalent to the length of the sentence they'll get if they're found guilty anyway. A poor defendant who can't afford bail may spend days, even weeks, in jail waiting to see a judge for a crime where prison time might not even be required. At that point, it's hard to justify spending time or money fighting the charge, even if backing down leaves an innocent person with a criminal record.

"Everybody who works in the system knows that the assembly-line cash bail system coerces guilty pleas," says Civil Rights Corps founder and executive director Alec Karakatsanis. Because American courts don't have the manpower to prosecute and try every person who gets arrested, he argues, "the system needs a way to coerce them into pleading guilty. The most effective way is to keep them in jail."

Spring 2018 finally saw calls for pretrial reforms start to spread across the country.

In Atlanta, media attention on the case of a homeless man who spent three months in jail because he couldn't afford \$200 in bail for a charge of soliciting on a roadway prompted the City Council and mayor to change the municipal court's system, cutting out cash bond requirements for several low-level nonviolent crimes. New Philadelphia District Attorney Larry Krasner, voted into office in November 2017 on a criminal justice reform platform, announced in February that prosecutors there would stop asking for cash bail for low-level offenses. Philly's City Council also passed a resolution asking the state to end cash bail. In his state of the state address in January, Democratic New York Gov. Andrew Cuomo called for an end to cash bail for misdemeanors and nonviolent felonies there as well.

This isn't only happening in Democratic strongholds, either. Arizona and New Mexico have seen pretrial detention reforms to reduce the dependence on money bonds for release. And legislation has been introduced in Ohio to use assessment tools to help judges determine release risks and reduce the dependency on bail.

The Pretrial Justice Institute sees the current push as the third generation of bail reform efforts. In the 1960s, Congress established a statutory right to bail unless the defendant is deemed a flight risk. (The Eighth Amendment protects against excessive bail *when offered* but doesn't require that bail be an option in a given case.) Whether the arrestee might commit more crimes if released was not initially considered relevant. That changed in 1984, with a reform permitting federal courts to keep people imprisoned prior to trial if they're deemed a threat to the community. The law was upheld in a Supreme Court challenge in 1987.

Burdeen believes the latest wave of reform efforts dates to 2011, when then–Attorney General Eric Holder hosted a symposium on the topic at the Department of Justice. He called for using risk assessments and other evidence-based tools to help courts decide who is safe to release. He also encouraged an expansion of pretrial services across the country—court staff devoted to tracking and communicating with defendants to make sure they don't skip out on court dates or commit crimes while freed. Burdeen says they've spend the past eight years working to push those tools out to states and cities.

Years of data and analysis have determined that three days in jail is all it takes to cause serious disruptions. “When those folks managed to get out, [their] jobs were gone,” an advocate explains.

But seven years later, meaningful change is just getting underway. Part of the reason is that what happens when a person gets arrested can vary widely from state to state and even from jurisdiction to jurisdiction. Courts across the U.S. don't all approach pretrial release decisions in the same way, so there's no single implementation plan that can be adopted in one fell swoop. Changes have to happen bit by bit. And since these reforms threaten a billion-dollar industry, bail bond representatives have been lobbying lawmakers and appealing to the public to try to stop reform in its tracks.

Peyser would have faced a far different pretrial experience had he been arrested in Paterson, New Jersey, instead of San Francisco. At the beginning of 2016, the Garden State launched a massive transformation of the pretrial detention procedures used in its district courts that has nearly eliminated the use of money bail as a mechanism for determining who goes free and who remains behind bars. Instead, the state now has a complex system involving case-by-case analyses and a bureaucracy devoted to keeping track of defendants to make sure they show up for court.

Visit the Passaic County Superior Court and you might not even hear the word “bail” during pretrial hearings. On a Monday afternoon in February, those arrested late Saturday, Sunday, and early Monday are brought in front of Judge John Meola (virtually—they remain in jail but appear on a monitor). Meola presents a recommendation from Pretrial Services of each defendant's risk factor. It's up to prosecutors to request a detention hearing if they believe a person is too dangerous to be let out. If not, the judge will order the defendant released, often with conditions requiring him or her to check in regularly with the pretrial staff.

On the day of my visit, prosecutors do inform the judge they want to detain a few people. In those cases, the defendant will be held pending a detention hearing in three to five days in a different courtroom. There, another judge will preside as the prosecution and the defense argue over whether the individual should be freed prior to his or her trial. There are unlikely to be debates over bail amounts; judges technically still have the authority to demand money bail in some situations, but last year they exercised the option only 44 times. If defendants violate the terms of their release, they're sent back to the same courtroom, where they may see their pretrial freedom revoked.

Today, Judge Donna Gallucio will decide whether Anthony Harris, 47, will be allowed to leave the jail. Harris was arrested the previous Tuesday in a drug bust, along with his brother, Charles. Police accuse the two of narcotics trafficking. During a short chase, Charles tossed aside a sack containing 93 baggies of crack cocaine and 101 glassines of heroin, according to the police report.

At the start of the hearing, Gallucio explains to Harris how the court functions. Under the new pretrial system, New Jersey operates on a presumption against detaining defendants before they are convicted. If a prosecutor objects to this freedom, the burden is on the state to convince the

court that there is no reasonable way to ensure the defendant will show up for trial and won't commit further offenses if released.

Harris does have a history of drug violations and failure to appear in court, but it's an old history, and a nonviolent one. He's been out of trouble for the past decade; he is not currently on probation or parole. A points-based assessment scored Harris as fairly high-risk due to his past, but it still recommended he be released with regular monitoring. Ultimately, the judge agrees with the recommendation rather than the prosecutor. Harris will be freed prior to his trial, but he must call and personally visit the court's Pretrial Services office for monitoring, not commit any crimes, and stay away from his brother.

Judge Ernest Caposela, the courthouse's assignment judge, explains that prior to the reforms in New Jersey, about 12 percent of the pre-conviction jail population was stuck behind bars because of an inability to afford even \$250 in bail. Meanwhile, defendants that judges and prosecutors thought were truly dangerous had to be offered bail as well—and even very high bail amounts aren't a significant barrier to those with the right connections.

"We had a lot of problems with gangs putting up the money," he says, in cases of alleged violent crime. "Our goal is this: We keep the highest risk in jail. One of the things the public has not understood, and even the judges initially, is that this is not to let everyone out of jail. It's not 'get out of jail free.' It's to keep the most dangerous people in."

Several floors down, employees of the Pretrial Services office work in cubicles, taking calls and checking in on those awaiting trial. They don't just passively wait to hear from defendants, explains John Harrison, criminal division manager for the courthouse. They will contact defendants to check on their status and make sure they're aware of pending court dates.

The pretrial services staff are also responsible for collecting the information and producing the risk assessments that judges use to help guide their decisions. Harrison shows off how the automated, algorithmic recommendations are put together. They use a Public Safety Assessment system pioneered by the Laura and John Arnold Foundation that—striving to be as objective as possible—puts a numerical rating on each defendant, based mostly on his or her history. It considers whether the person has previous convictions, whether the charges are for violent crimes, and how often he or she has missed court dates both recently and in the past. The assessment doesn't take into consideration socioeconomic factors such as race, employment, zip codes, or anything else that isn't connected to the defendant's actual behavior. The one exception is age, and only because defendants under 20 statistically have an increased likelihood of missing court appearances.

With a few clicks, Harrison is able to run an assessment of a defendant scheduled to make his first appearance that afternoon. The computer measures him on two scales. One quantifies the risk that he'll commit new crimes while on release. The other quantifies the risk that he'll skip out on the court. Each is represented as a number from zero to six.

While the algorithm populates the numbers automatically, Harrison gets much more than just a couple of digits. The system also shows the information that led to the rankings. This defendant's risk factor has been elevated due to a previous conviction. Harrison is able to quickly see that the conviction was for misdemeanor joyriding. The prosecution and defense will see this information, too. A decision on whether he'll be kept in jail before his trial will not be based on just an algorithm spitting out a two or a five.

Prior to the reforms in New Jersey, about 12 percent of the pretrial jail population was stuck behind bars because of an inability to afford just \$250 in bail.

"Three years ago, these reports might not have been seen," Harrison explains, before a judge was asked to determine a defendant's release requirements. "They might not have had all the information." Without a risk assessment, judges tended to rely on bail schedules that give dollar amounts on the mere basis of the charges filed.

But does the new system work? On the most obvious level, yes: Fewer people are being kept behind bars. A report covering the first year of these reforms, submitted by the New Jersey Courts to the governor's office, noted that the state saw a 20 percent drop in pretrial detentions across 2017. All in all, there's been a 35 percent drop in the pretrial jail population dating back to

2015. Of the nearly 150,000 defendants charged with crimes in New Jersey last year, only 5.6 percent remained locked up prior to their trials.

This drop in detentions did not appear to result in a crime wave. A report released in March noted a small (2.7 percent) decline in the state in 2017. That's not out of line when compared to other nearby states, according to statistics collected by the FBI. Crime throughout the Northeast generally declined last year.

No matter where they might fall ideologically, those calling for bail reform consistently point fingers at one foe for the sad state of the status quo: bail bondsmen. The Civil Rights Corps' Karakatsanis bluntly calls the current pretrial situation "a wealth transfer from the poor to the bail industry."

Activist groups in some cities have developed nonprofit community bail funds to assist defendants in getting out without turning to bondsmen. A smartphone app called Appolition, launched last November, lets citizens donate directly from their bank accounts to help fund strangers' bail. But arguably the biggest cultural shift came in May, when Google and Facebook, partnering with several civil rights organizations and joined by representatives of Koch Industries, announced that they would no longer accept online advertisements from the private bail bond industry. (The Charles Koch Institute and the Laura and John Arnold Foundation support Reason Foundation, the nonprofit that publishes this magazine.)

A New Jersey commission in 2014 blasted the private bail system not just for leaving low-income nonviolent offenders stuck behind bars but also for corruption. Furthermore, it found, the whole bail industry operates on the idea that the bondsmen are taking a financial risk in covering the client's bail via "surety bonds"—but it turns out courts were not actually collecting most of the money these bonds promised when defendants skipped out. In 2013, the average settlement for forfeited bail amounted to 12.5 percent of what was owed. The bail companies were getting paid, but they were not risking nearly as much as people assume.

Representatives from the bail bond world have lobbied heavily and even filed suit to stop reforms in places like New Jersey and New Mexico that reduce the demand for cash bail. If these experiments spread, they could take out an entire industry that employs thousands and earns billions.

Jeff Clayton, executive director for the American Bail Coalition, has demanded data showing that New Jersey's shift is actually working. (The state will be releasing a report in the fall examining recidivism rates under the new system.) He also critiques the new either-or scenario in New Jersey: You're either free or you're detained, with almost no options for those kept locked up to post money and get out. "I think what New Jersey is going to prove is that giving them the power to detain with no bail is even more dangerous," he says.

Clayton notes that the request rate by prosecutors to hold defendants without bail varies from court to court. One in New Jersey detained a third of all defendants who were eligible for release in this system. Another jailed less than 10 percent.

Indeed, the reform was designed to give courts *more* power to detain people with no pretrial way out. It's one of the reasons then-Gov. Chris Christie called for changes. Previously, the state constitution required that arrestees be offered bail for anything other than a capital crime (and New Jersey no longer has capital punishment). Some 8,000 people were held until their trials in the state last year. Most of them would have previously been offered some sort of bail, even if they couldn't afford it.

"The defense of posting financial conditions for jail release is that it's a constitutional right," Clayton argues. "I think that's the tradition on this continent. Whether it *should* be required is up for debate."

Clayton and Karakatsanis couldn't be further apart on the use of cash bail, but interestingly, they both raise a similar specter: that when cash bail is eliminated, it could lead to increased rather than decreased jail detentions.

Caposela, the assignment judge, explains that New Jersey's pretrial changes came amid some other criminal justice reforms that pushed police officers to give summonses rather than seeking

warrants—meaning fewer arrests in the first place. The court system also made significant changes intended to force speedier trials. Once somebody is arrested in the state, prosecutors have 90 days to indict him, and in most cases people must be tried within 180 days.

In other words, defendants in New Jersey who are kept in jail are not going languish for extended periods waiting for their trials. These bail reforms didn't happen in isolation; they included massive changes to the way the court system operates to improve its efficiency. They're not cheap, either—New Jersey's new system comes with a price tag of \$35 million for next year. But what if a court somewhere got rid of cash bail but also let prosecutors wait years before bringing jailed defendants to trial? What if it didn't or couldn't fund the pretrial services component of New Jersey's reforms?

There's also reason to fear that if judges are not given a proper framework for determining when to detain, they may be reluctant to consider letting even remotely risky people out, since public backlash could fall on them if something goes wrong.

In Maryland last year, judges were told to consider money bail as a final resort rather than as the default and to not hold defendants in detention solely because they couldn't afford the bail amounts. This ended up backfiring in Baltimore. Some local law students looked over the dockets and found that defendants were being detained without any bail opportunity at all—even nonviolent defendants with no criminal history. Suddenly, pretrial detentions were going up, not down. In May, a local television station reported that even though arrests in Baltimore had declined compared to 2017, the number of people who were stuck in pretrial detention had increased 31 percent.

For the same reasons, Karakatsanis is watching California with some concern. Will the judges who previously refused to look at risk factors when setting bail for defendants like Bill Peyser simply resort to “widespread preventative detention” if cash bail ceases to be an option? He also worries about changes that might permit for-profit companies to take control of pretrial monitoring services and then shift costs over to defendants, by making them pay for their own monitoring even though they haven't been convicted of a crime. That already sometimes happens in places where the state runs the system; Georgia law currently allows judges to order defendants to cover the costs of pretrial electronic monitoring when such a measure is ordered as a condition of their release.

“If you care about the intrusion of the government on individual liberty,” Karakatsanis says, “just getting rid of the cash bail system is great. But it sets up another fight.”

Posted July 23, 2018 06:06 am
By [Jeffrey J. Clayton](#)

SB 91 catch-and-release catastrophe pushed by Texas crusader



Lemon Creek Correctional Center pictured on Friday, April 13, 2018. (Michael Penn | Juneau Empire File)

Alaska recently rolled back portions of Senate Bill 91 and in the process curtailed what has been disastrous public policy advocated by a self-styled crusader from 3,500 miles away. It's important for Alaskans to understand what just happened, lest they fall prey to attempts by carpetbaggers to manipulate state issues in the future.

Mark Levin, a professed criminal justice guru from the Texas Public Policy Foundation, pushed state lawmakers on bail reform legislation that ceded judges' authority to determine who is eligible for bail and conditions of release to an unelected and unaccountable computer program. Indeed, when the faceless program decided someone should be released, the role of judges in Alaska became tantamount to spectators watching the game from the bench. The move tied the hands of judges, according to reports from various news outlets.

Gov. Bill Walker originally signed SB 91 to reverse this dangerous policy. He agreed when asked by a reporter if he thought the mandatory release component of the law went too far. When further questioned if a computer program should be allowed to force mandatory release in favor of limiting judicial discretion, Walker said, "Some tools had to be given back to the judges — it was clear that was going to be necessary."

Like a snake oil salesman, Levin has been peddling algorithmic justice around the country. In the process, he has laid out outlandish claims in his crusade to rationalize computerized justice. In attempting to provide "additional facts" to Alaskans to help them understand the issues, he has self-immolated. Levin's efforts have resulted in this bit of bad legislation going from "broad support to bipartisan backpedaling," according to local media.

So what went wrong with the notion of a new algorithmic utopia? State Attorney General Jahna Lindemuth made it pretty clear — it doesn't work, saying, "We've been hearing a lot from Alaskans about their cabins, cars, shops and homes being broken into. People feel scared and that fear is warranted."

There has been a great deal of coverage of how the son of Sen. Shelly Hughes was a victim of a crime perpetrated by a person with a lengthy rap sheet and released on a "get out of a jail free card." When Hughes, an original supporter of SB 91, reversed her position, she made a point to say that she was given "false information about SB 91, including that Texas had implemented similar reform first."

To set the record straight, Texas has not implemented statewide risk assessment. In fact, when the Texas legislature debated the merits of Levin's bail reform ideas, he encouraged them to follow the lead of Alaska. To illustrate the depths of Levin's disingenuousness, his subsequent oped in the Anchorage Daily News, published last October, carried the extremely misleading title "Texas Experience Makes It Clear: Alaska Should Give SB 91 Time to Work." This was after Texas had already rejected the nearly identical bill.

Levin's attempted manipulation of Alaska is a dangerous embarrassment because he couldn't convince his home state to implement the very bail risk assessment algorithm he championed in Alaska. In fact, the nonprofit Texas Alliance for Safe Communities issued a statement this past month in which it concluded that Alaska's catch-and-release bail reform had created a public safety crisis.

When it comes to their own best interests, Alaskans should listen to other Alaskans — not interlopers from other states like Levin, armed with a failed computer algorithm model that is coming under increasing criticism from community groups and sociologists from universities alike.

It is ironic that Texas is now looking to Alaska as an example of what not to do. Mandatory computerized justice represents a truly epic failure encompassing two states. Let it also serve as a cautionary tale for the future.

• **Jeffrey J. Clayton is the executive director of the American Bail Coalition.**



Fort Myers shooting highlights cracks in patchwork pretrial release system



DREW WILSON July 30, 2018

Fort Myers police officer **Adam Jobbers-Miller** died Saturday, one week after **Wisner Desmaret** allegedly shot him while Jobbers-Miller was answering a call at Marathon gas station.

The shooting, now killing, has turned into a flashpoint that cuts across many political issues, namely immigration, mental health and pretrial release.

Desmaret, 29, is a Haitian immigrant who came to the United States legally when he was 9 years old but remained illegally after his visa expired. He has in the past been [held on an ICE detainer](#), and another has been issued in the wake of the shooting.

In 2016, Desmaret was deemed [incompetent to stand](#) trial and non-restorable by a Lee County judge due to an “intellectual disability.”

Also in 2016, he was deemed incompetent to stand trial but not un-restorable by a Sarasota County judge. After that ruling, he spent 14 months in a Florida state hospital until a doctor signed off that he was competent enough for the court to proceed with his case.

He was arrested this year for violating the terms of his probation, and on July 19 [a Sarasota County judge released him from jail](#) under the supervision of the county’s pretrial services program until his scheduled court date for the probation violation on Aug. 16.

His pretrial release stipulated that he must take all of his medications, check in by phone and in-person with Sarasota County’s pretrial services program every two weeks, and inform the program if he intended to leave the county overnight.

He never made the first of those bi-weekly phone calls or visits, as just two days after his release he was two counties away in Fort Myers, where he shot Jobbers-Miller, also 29, as he was attempting to apprehend Desmaret after responding to a 911 call that a man had assaulted a group of people after stealing a cell phone from one of their vehicles.

While immigration issues are largely relegated to the federal government, pretrial release policies are not.

Matt Jones, a Charlotte County bail bondsman who serves as president of the [Florida Bail Agents Association](#), said the shooting “hit close to home” due to a relative of his being a police officer in the area. Given Desmaret’s background, he says “there needs

to be a lot better checks and balances” in Florida’s pretrial release programs, which can vary greatly depending on jurisdiction.

“We need to have better transparency — rather than a county by county thing, there needs to be a statewide system,” he said. “There’s a statewide pretrial release [framework], but only a couple rules to follow. You have statewide charges, why not a statewide pretrial release system?”

Jones said he was unsure whether current laws could have prevented this shooting. As a bail bondsman, he said that if Desmaret “had called our office we probably wouldn’t have bonded him out.” Still, while he and the association he represents are in favor of judges deciding the best course of action in any case, he said he doesn’t “think pre-trial release is the solution to the mental health crisis.”

“Was pre-trial going to be giving him his meds every day?” He asked.

With a bi-weekly check in schedule, and Desmaret’s indigent status, that would seem unlikely.

Most medications that treat severe mental health disorders — Desmaret wrote to a judge that he believed people, specifically police, were out to kill him — must be administered daily. And a large subset of them need time to gradually titrate through a patient’s system.

For certain conditions and the medications that treat them, that could mean a continual ratcheting up of doses — one pill a day the first week, two a day for the next, and so forth, until the optimal dosage is achieved.

Rushing that process is dangerous, [or possibly deadly](#), depending on the medication. And court services programs do not have the medical know how to determine if a drug combination is effective in the first place.

Jeff Clayton, a lobbyist for the [American Bail Coalition](#), says nobody — meaning the 46 states that have a cash bail system — is handling mental health well. In California, for example, someone deemed incompetent to stand trial can only be held in jail for up to three years. In Colorado that same person could be held indefinitely.

But when it comes to pretrial release, he agrees that statewide consistency is important.

He also pointed to data poking holes in pretrial release programs effectively reducing jail populations, saying “supervision isn’t the answer” to that dilemma, but more and better prearrest diversion programs could be.

Clayton added that risk assessment tools — algorithms that take an offender’s data and spit out a risk score — also share some blame in possibly letting the wrong people walk free while they await trial. Those algorithms have seen widespread adoption in recent years to varying success.

“Before 2013, if you were against risk assessments you were a leper,” he said. “When the algorithms are debunked it will be like the lifeboats on the Titanic.”

[Right on Crime](#), a national group that pushes policies on many criminal justice issues, doesn’t ascribe to that line of thinking when it comes to risk assessment tools. [The group says](#) such algorithms can help judges “gain a bigger picture of each individual and make decisions on a case-by-case basis if they utilize risk assessment tools that take criminal records into account.”

The group is, however, in favor of prearrest diversion programs that give police the option of sending low-risk offenders with mental health or substance abuse problems to treatment programs rather than jail.

When it comes to the case of Desmaret, Right on Crime’s Florida state director, **Chelsea Murphy**, said there is a promising new law on the books that could possibly prevent something similar to the Fort Meyers shooting from happening again.

“First and foremost, our thoughts and prayers are with the Fort Myers Police Department,” she said. “This is an absolute tragedy and further proves that judges need all the tools possible when making decisions. Pretrial services, risk assessment, and mental health services all play a key role in ensuring public safety. Hopefully with the passage of the [new 2018 data transparency](#) bill and with future legislation in 2019 we can work to have a more transparent criminal justice system.”

The current measure referenced by Murphy is [SB 1392](#), which was championed by St. Petersburg Republican Sen. **Jeff Brandes** in the Senate and Tarpon Springs Republican Rep. **Chris Sprowls** (via [HB 7071](#)) in the House. The legislation was signed into law by Gov. **Rick Scott** on March 30.

Among its many provisions, the bill requires the establishment of two prearrest diversion programs in each judicial circuit in the state, one for adults and one for juveniles. It also requires that information about prearrest diversion programs and pretrial release programs be shared with the Florida Department of Law Enforcement, which in turn makes that information freely available to the public.

The thinking is that the more data made available to the judges who make the decision pretrial release decisions, the better their decisions.

As far as the legislation for 2019, details are expected in the coming months. Whatever its final form, it’s likely that the proposal will be a collaboration supported by both the bail industry and Right on Crime — that would be a “breakthrough” according to one bail industry expert, given that Right on Crime often champions [bail reform measures](#) that are harshly opposed by bail bondsmen.

Drew Wilson

Drew Wilson covers legislative campaigns and fundraising for SaintPetersBlog and FloridaPolitics.com. While at the University of Florida, Wilson was an editor at The Independent Florida Alligator and after graduation, he moved to Los Angeles to cover business deals for The Hollywood Reporter. Before joining Extensive Enterprises, Wilson covered the state economy and Legislature for LobbyTools.

The Marshall Project



Sen. Cory Booker in Washington in January. ERIN SCHAFF/UPI, VIA NEWSCOM

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[NEWS](#)

Senators Take Aim at Bail Industry Backers

Cory Booker and Sherrod Brown, both Democrats, want answers from the insurance industry.

By [JOSEPH NEFF](#)

The mention of “bails bonds” can conjure familiar images: red neon signs glowing near a county jail, or the leather vest, dark sunglasses and blond mane of reality show star Dog the Bounty Hunter.

Usually not a skyscraper or office building.

But insurance companies form the quiet backbone of the industry, underwriting the vast majority of the millions of bail bonds written each year while undergoing little public scrutiny.

Two senators want to shine some light on the business. On Friday, Sen. Cory Booker, D-N.J., and Sen. Sherrod Brown, D-Ohio, sent a letter to 22 insurance companies requesting details of their finances and their relationships with the bail bond agents they underwrite.

Booker and Brown are among critics who charge that the bail system unfairly jails poor people who cannot afford to purchase their pretrial freedom.

“Many of our nation’s insurance companies may be pursuing profits at the expense of economic security for vulnerable families and the goals of public safety,” the senators wrote.

Citing studies and articles of bail agents overcharging, bullying and otherwise behaving badly, they asked the insurers to detail how they police and punish bad behavior.

“I am particularly concerned that the insurance industry — which has received hundreds of millions of dollars in revenues related to bail bond insurance — is not doing all it can to ensure that the bond agents with whom they contract are complying with the law,” the letter states.

Critics of cash bail have succeeded at pushing some changes through the courts and legislatures. New Jersey essentially ended cash bail in 2017. A half-dozen states have limited cash bail through laws, constitutional amendment or rules of criminal procedure. Judges in California, Texas and elsewhere have struck down bail systems as fundamentally unfair.

The bail industry has fought the changes state by state and court by court. Bail agents make money by charging defendants a nonrefundable percentage, usually 10 percent, of the bond amount set by a judge or magistrate. In return, the agents promise to ensure the defendant shows up in court. If the defendant fails to appear, a judge can order the bail agent to pay the full bond amount to the court.

The insurance companies underwrite this risk by promising to pay the full bond amount if the bail agent can’t. For example, if a bail agent collected a \$10,000 fee on a \$100,000 bond and the defendant disappears, the insurance company is on the hook for any part of the \$100,000 the bail agent can’t pay.

It’s unclear what the impact the letter will have. Both senators are in the Senate minority. Brown is the ranking minority member on the Senate Banking Committee and sits on the Finance Committee. Congress does not regulate the insurance or bail industries; states do.

The American Bail Coalition, the trade association and lobbying group for the bail insurance companies, made that point Monday in response to the senators' letter.

"The letter evinces an complete lack of understanding of the industry and how it is regulated," ABC executive director Jeffrey Clayton said in a statement. "Obtaining this information is the province of state Departments of Insurance, many of whom already collect this information, much of which is also a public record."

But if companies answer the letter in full, the public could learn much about an opaque industry where data is spotty and of varying quality and quantity. Each state has different laws and different regulators monitoring bail agents and insurance companies. And while bail agents perform a public function, they are for-profit actors whose relations with their clients and underwriters are shrouded by private contracts.

Basic questions go unanswered, even the size of the industry. Booker's letter referred to a \$2 billion annual market in bail bond premiums. A.M. Best, a prominent insurance ratings agency, pegged that figure at \$1.3 billion and dropping.

In a recent report, Best concluded that the reform movement has made a dent in industry finances.

After years of uninterrupted growth, bail bond premiums fell more than 3 percent in 2017 compared to the year before. The report forecast more decline as more laws change and lawsuits prevail.

"Ultimately, in states where reform measures significantly diminish — or eliminate entirely — the need for defendants to post cash bail, the business of bail bond agents and bail bond insurance specialists as currently constituted will likely cease to exist," the report said.

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DAILY MINER

TRUSTED LOCAL NEWS LEADER FOR KINGMAN, ARIZONA & MOHAVE COUNTY

Free pass from jail: Civil rights groups split over bail reform bill



More than 100 civil rights groups, including the American Civil Liberties Union, banded together recently to express concerns with the adoption of “algorithmic-based decision-making tools,” also known as risk assessment, as a substitution for ending money bail. (Adobe Images)

Story by [Hubble Ray Smith](#)

Originally published Friday, August 10, 2018 at 06:00a.m.

KINGMAN – Civil rights groups are clashing over a national bail reform bill introduced in July by Sen. Bernie Sanders, I-Vermont, fracturing the main forces behind the movement and bringing change to the way criminal defendants are released from incarceration.

More than 100 civil rights groups, including the American Civil Liberties Union, banded together recently to express concerns with the adoption of “algorithmic-based decision-making tools,” also known as risk assessment, as a substitution for ending money bail.

Jeffrey Clayton, executive director of the American Bail Coalition, wants to reduce the financial burden on government and taxpayers by developing the most efficient means for pretrial release while at the same time maximizing public safety.

“At least since 1984, groups that are primarily on the left pushed for reforms,” Clayton said Thursday in an interview with the Daily Miner. “We can use the computer to determine who’s in (jail) and who’s out and other conditions like supervision and ankle monitors.”

Bail reform has traditionally been regarded as a politically progressive agenda item. Sanders introduced his bill to end monetary bail, declaring that Americans “should not be in jail today because they cannot afford cash bail.”

If passed, bail bonds would be replaced by risk assessment tools that have been debunked by the very groups who originally supported their use, Clayton noted.

“This is a generational shift in thinking over the last 10 years. The ACLU and all these other groups, now they’ve changed their mind and that’s a significant shift. Obviously, they don’t like the bail bond solution, but now it’s murky,” he said.

The Bail Reform Act of 1984 authorizes and sets procedures for a judge to release or incarcerate a defendant while waiting for trial, sentencing or appeal. It’s been amended several times.

Risk assessment tools are key to bail reform. In jurisdictions where it’s been enacted, a computer algorithm is used to determine whether or not a defendant charged with a crime is safe or dangerous. Depending on its mathematical conclusions, individuals are then released without posting bail while they await trial.

“The system is supposed to stop the inherent unfairness of a poor person being stuck in jail because they can’t afford the money for bail, while someone wealthier can buy their way out,” Clayton said. “It’s also supposed to remove racial and gender bias.”

Mohave County Attorney Matt Smith said Arizona has its own rules of criminal procedure as dictated by the Arizona Supreme Court.

Every person arrested is eligible for bond unless they’re being charged with a capital offense or committed a crime against children, or they’re otherwise considered to be a danger to the community or flight risk.

“Ninety-eight percent of offenses are available for bond under least onerous conditions,” Smith said. “The presumption is someone would be released on their own

recognizance, but the court looks at factors like their employment history, their family, how long they lived here as well as the seriousness of their offense and to a lesser extent the strength of the state's case."



Jesse Dobbins, right, owner of Breakout Bail Bonds, takes a cigarette break with a friend Thursday outside his office. He said computer-based algorithms are not the best procedure for determining defendants' release from custody. (Hubble Ray Smith/Daily Miner)

The county attorney said doesn't see Sanders' bill passing a Republican-controlled House and Senate.

Unfortunately, risk assessment tools have proven to be inaccurate in some determinations, declaring some violent offenders as safe, while deeming others with seemingly minor blemishes on their records as dangerous, Clayton explained.

"Of course, with bail removed as an option, these individuals are stuck in jail with no recourse," Clayton said. "As time has passed, it has become increasingly clear that the risk tools don't work."

ProPublica issued a report that declared one of the nation's most widely-used sentencing algorithms to be "biased against blacks." A number of independent studies have also questioned the effectiveness to reduce racial disparities.

According to the Pretrial Justice Institute, 60 percent of people in jail are awaiting trial, meaning they have not been convicted for a crime. Also, bail amounts for black men are 35 percent higher than whites, and Latinos are 19 percent higher.

ACLU and other civil rights groups have declared that the algorithm actually works against minorities.

Jesse Dobbins, owner of Breakout Bail Bonds in Kingman, said local judges look at all variables and "think outside the box." They're good about exonerating bonds, he added.

"If you've moved and didn't go to court, now you've got a failure to appear and they're going to keep you in jail and take your rights away from someone who's innocent until proven guilty," he said. "That's where the algorithm screws you. You may have moved and never got the ticket."

The contradictory views represent a major break between progressives behind bail reform, including Sanders and the Pretrial Justice Institute, and civil rights groups – also progressives – who were the beneficiaries of their efforts in the past, Clayton said.

Meanwhile, the commercial bail industry, often regarded as being aligned with conservatism, has acknowledged that reforming the bail system is necessary, but has always challenged the use of risk assessment tools to achieve that goal.

“We represent insurance companies that underwrite criminal bail bondsmen,” he said of the American Bail Coalition. “We do a pretty good job and shouldn’t be put out of business.”

Clayton, a licensed attorney, has worked in various capacities of public policy and government relations for 15 years. Most recently, he worked as general counsel for the Professional Bail Agents of Colorado, in addition to serving clients in legal, legislative and policy matters.



Fifth Circuit serves up win for Harris County Criminal Court at Law judges

By [David Yates](#) | Aug 16, 2018

HOUSTON – The U.S. Court of Appeals for the Fifth Circuit issued a ruling on Aug. 14 in the case of ODonnell v. Harris County, granting the request of the Harris County Criminal Court at Law judges to issue a stay of Judge Lee Rosenthal's order in U.S. District Court, which required the release of defendants who claimed they could not afford to pay for bail.



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The case concerned three individuals who were arrested and their contention that they were unlawfully denied the right to bail because of their inability to pay the amount indicated by Harris County's set bond schedule, according to a press release.

In its original ruling in February, the Fifth Circuit affirmed in part and reversed in part a ruling made by Judge Rosenthal in U.S. District Court in April 2017, in which she upheld the position of the plaintiffs.

"Vindication is the best word to describe the outcome in this decision," said Jeff Clayton, executive director of the American Bail Coalition. "It is too bad taxpayer money had to be wasted because a federal judge gave plaintiffs more relief than they settled for and agreed was constitutional."

Essentially, the court held that Judge Rosenthal ignored the original decision from the Fifth Circuit, and issued a similarly flawed order by eliminating secured bail for indigent misdemeanor arrestees.

However, the court held that there is no such fundamental right to be free from any form of wealth-based detention, concluding that the sweeping injunction was overbroad. In so ruling, the Court of Appeals affirmed for a second time that the constitution does not require the outright elimination of secured bail for indigent defendants. The court held that there is no right to affordable bail.

In addition, the court said that Judge Rosenthal's order had created the risk of irreparable harm to the public and judges.

The Court of Appeals also ruled that when there is adequate due process allowing for a meaningful bail review hearing within 48 hours, the heightened scrutiny to such procedures goes away.

Under these circumstances, courts should simply impose the standard of rational basis. In effect, this means the issue in Harris County was not wealth-based discrimination *per se*, but rather, the idea that wealth-based discrimination without adequate due process was the actual problem. In fact, defendants had not been allowed to raise the issue even during appearances before a magistrate.

The ruling is considered a significant victory and vindication for the bail industry. Before the decision, more than 50 percent of misdemeanor defendants in Harris County were failing to appear for their court appearances in apparent disregard to Judge Rosenthal's earlier order.

Fifth Circuit Court Gives Harris County A Win

August 17, 2018



Fifth Circuit Court of Appeals serves up a win for Harris County Criminal Court at Law Judges.

Court Rules: No Right To Affordable Bail, Only Right To Be Heard Within 48 Hours

Lakewood, CO (August 16, 2018) – The U.S. Court of Appeals for the Fifth Circuit issued a ruling on Tuesday in the case of ODonnell v. Harris County. It granted the request of the Harris County Criminal Court at Law judges to issue a stay of Judge Lee Rosenthal's order in U.S. District Court, which required the release of defendants who claimed they could not afford to pay for bail.

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About the American Bail Coalition

The American Bail Coalition is dedicated to protecting the Constitutional right to bail and the promotion, protection, and advancement of the surety bail profession in the United States. Comprised of the nation's largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilize its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions.

LOCAL NEWS

Appeals Court Upholds Use of Cash Bail for Low-Income Defendants

posted by 1200 WOAI - Aug 17, 2018



A federal appeals court has ruled that people arrested in Texas who cannot afford to make bail do not have a Constitutional right to be released without bond, overturning an effort by several judges in Harris County to fight the growing problem of Texas jails being packed with people who have not been committed of a crime, News Radio 1200 WOAI reports.

The Fifth Circuit Court of Appeals, which includes Texas in its jurisdiction, says individuals who are arrested have a right to see a magistrate within 48 hours, but that magistrate is not required to take the person's ability to pay bond into consideration when the bail is set.

A new report shows as many as two thirds of the inmates in urban county jails are there to because they have been convicted of any crime, but because they have been arrested and cannot afford bail, which general requires a person to pay ten percent of the amount in cash.

Magistrate Court Judges in Harris County, who filed the appeal along with the American Bail Coalition, which is made up of bail bond companies, says since the Harris County effort to allow misdemeanor defendants who could not afford bail to be released without bail, as many as 50% of defendants were failing to appear for their court dates.

"Vindication is the best word to describe the outcome in this decision," said Jeff Clayton, Executive Director of the ABC. "It is too bad taxpayer money had to be wasted because

a federal judge gave plaintiffs more relief than they settled for and agreed was constitutional."

The issue of the fairness of the current system of cash bail is a growing civil rights problem. Activists argue that the system is unfair because it allows wealthy defendants in criminal cases to walk free while low income defendants sit in jail, sometimes for years, simply because they can't afford bond. They say this has created a 'two tier' system of justice and leads to county jail overcrowding and jail suicides, and encourage judges to use alternatives like electronic monitoring for low income defendants.

"The Constitution does not require mandatory release of those who cannot afford bail," the appeals court said in its ruling.

IMAGE: GETTY



CRIMINAL JUSTICE

5th Circuit stays judge's ruling requiring automatic release of indigent misdemeanor suspects

BY [DEBRA CASSENS WEISS](#)

POSTED AUGUST 17, 2018, 10:20 AM CDT



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A federal appeals court on Tuesday stayed a portion of a federal judge's ruling that required the automatic release of misdemeanor defendants in Harris County, Texas, if they were unable to pay bail.

The 2-1 [decision](#) by the New Orleans-based 5th U.S. Circuit Court of Appeals left in place another part of an order by U.S. District Judge Lee Rosenthal of Houston that requires an individualized hearing to set bail within 48 hours. But the remedy for violating the 48-hour requirement should not be immediate release, the appeals court said. The [Houston Chronicle](#) and [Houston Public Media](#) have coverage.

Fourteen of the county's 16 judges had sought the stay, arguing that Rosenthal's requirement for automatic release violates the 5th Circuit's [earlier decision](#) in the case. The 5th Circuit ruled in February that a bail system that mostly relies on set amounts is unconstitutional, and an individualized assessment is required.

Rosenthal's order, imposed after the February appellate decision, had required the release of misdemeanor arrestees who aren't subject to a hold—such as a detainer by immigration authorities or an outstanding warrant—if certain conditions were met. One condition is that the defendants would have been released if they had posted bail. The second is that they signed affidavits asserting an inability to pay.

The 5th Circuit overturned that automatic release requirement, along with Rosenthal's requirement for the release of defendants who don't get a bail hearing in 48 hours.

The 5th Circuit said Rosenthal had ordered “release of an indigent arrestee with no strings attached and before an opportunity for the county to provide the strings,” circumventing the purpose of bail and violating its original decision. “Secured bail was not eliminated for any category of indigent arrestees, no matter how narrow,” the appeals court said.

The 5th Circuit also said the remedy for failing to set bail within 48 hours should not be the release of the defendant. Instead, the 5th Circuit noted it had crafted a suggested model injunction in its earlier opinion that called for weekly reports of missed 48-hour deadlines and notification to defense counsel or the defendant's next of kin. A pattern of delays might warrant federal court relief, the court had said in the past opinion.

In the new opinion, the appeals court said anything broader than the earlier suggested remedy violates any reasonable reading of its mandate.

A dissenting judge would have upheld Rosenthal's release requirements.

The ABA had [filed an amicus brief](#) before the February decision that had urged the 5th Circuit to hold that the Harris County system is unconstitutional because it effectively conditions freedom on the defendant's ability to pay. *The American Bail Coalition applauded the new decision. “The issue in Harris County was not the wealth-based discrimination per se, but instead it was the idea that wealth-based discrimination without adequate due process was the problem,”* the coalition said in a [press release](#).

Harris County Commissioner Rodney Ellis expressed disappointment at the ruling in a news release. “Time spent behind bars can cause significant harm to defendants who may lose their jobs or be unable to care for their families simply because they cannot afford bail, underscoring the real-world impact of a two-tiered justice system,” he said.

The case is *ODonnell v. Harris County*.

Tuesday, August 14, 2018

US Senators Question Carriers Over Accountability of Bail Bonds Insurance Sector

WASHINGTON - Two U.S. senators sent letters to 22 insurance companies requesting details of their finances and questioning the accountability of the bail bond agents they underwrite in the wake of reports the pretrial cash bail system unfairly targets poor consumers.

"We are concerned that many of our nation's insurance companies may be pursuing profits at the expense of economic security for vulnerable families and the goals of public safety," said the letter from U.S. Sens. Cory Booker, D-N.J., and Sherrod Brown, D-Ohio.

"Consumers in the bail industry frequently find themselves trapped in a cycle of debt and fees related to their payments, often for long after the original charges with the courts have been resolved," the letter said.

Under the bail system, those charged with a crime contract with bail bondsmen to stay out of jail pending a court hearing or trial. Bail agents, who are underwritten by insurers, charge a nonrefundable percentage, usually 10%, of the bond amount set by a judge or magistrate. The bail is forfeited if the consumer fails to show up.

The letter noted recent studies suggested the bail industry abusively targets low-income consumers and undermines the goals of the criminal legal system.

"We are particularly concerned that the insurance industry — which has received hundreds of millions of dollars in revenues related to bail bond insurance — is not doing all it can to ensure that the bond agents with whom they contract are complying with the law," the letter said.

Of the insurance companies named in the letter, included are the five largest bail bond writers: Bankers Insurance Group (Bankers Financial Corp); Palmetto Surety Co.; Financial Casualty & Surety; American Surety Co.; and Lexington National Insurance Co.

Jeff Clayton, executive director of the American Bail Coalition, said the senators' letter shows the lawmakers don't understand insurance regulations. "Obtaining this information is the province of state departments of insurance, many of whom already collect this information, much of which is also a public record," Clayton said in a statement. "Senators Booker and Brown also failed to note that 115 national civil rights groups, including the NAACP, soundly rejected the risk-based bail system that is posited as the alternative to the no money bail system."

States have begun to implement reforms or have stuck down the bail systems. New Mexico in 2016 passed a constitutional amendment to prevent the pretrial detention of people awaiting trial based on an inability to pay. And, New Jersey is the one state that has functionally eliminated secured cash bail, according to a recent Best's Special Report (Best's News Service, June 7, 2018).

The report noted reforms in surety market's bail bonds insurance sector had a financial impact on writers of bail bonds insurance. After years of growth, 2017 gross and net bail bond premium declined between 3% and 4% compared with 2016, the report said.

As state reforms move forward, the industry could be hit further, said David Blades, senior industry analyst, A.M. Best, and the report author. "So far this year, looking at and doing the research for this report, the push for pretrial detention reform and bail reform has never been higher," Blades told A.M. BestTV. "We may indeed see that 2017 was, indeed, the tipping point as we look forward."

"There are more than 30 states right now where bail reform legislation is being considered. Basically those states are seeking to reduce or do away with cash bail as a form of pretrial detention," he said. Direct bail bond premiums written dropped from \$1.34 billion in 2016 to \$1.3 billion last year, the report said.

“There was a definite impact on premium that we saw in 2017,” Blades said. “If we see that as a harbinger of things to come, especially with 2018, now that those 30 states, as I mentioned, are looking at bail reform seriously.”

“We can see that the magnitude of decline in premium in 2018 and going forward could be much greater than the small, modest decline that we saw in 2017,” Blades said.

According to the report, the top five writers of bail bonds, by 2017 net premiums written, are Bankers Insurance Group, with \$20.4 million; Palmetto Surety Corp., \$13.2 million; Financial Casualty & Surety Inc., \$12.6 million; American Surety Co., \$11.3 million; and Lexington National Insurance Corp., \$11.2 million.

(By Frank Klimko, Washington correspondent,
BestWeek: Frank.Klimko@ambest.com)
BN-NJ-8-14-2018 1455 ET #



Cassandra Aquart

Aug 16, 2018

New Jersey Used An Algorithm To Revamp Its Bail System: Is It Working, And At What Cost?



Photo Credit: SupervisorKuehl.com

One of the hallmarks of our criminal justice system is that you are innocent until proven guilty. But when you can't afford cash bail, this sacred principle feels like it doesn't apply to you as you languish in jail awaiting trial.

In New Jersey, a [2013 study by the Drug Policy Alliance and Luminosity](#) found that about 40 percent of the people in jail, many of whom are [Black and Latinos](#), were there simply because they couldn't afford modest bails.

To create a fairer system, New Jersey embraced technology to shake up its bail system by (almost completely) eliminating cash bail for most nonviolent defendants in January 2017—though not without some challenges and vociferous critics.

The key to New Jersey's bail reform is the public safety assessment tool, a risk assessment algorithm. The algorithm evaluates a defendant's three risk scores—failure to appear in court, engaging in new crimes if released, and committing a violent crime if released—and charges, and proposes a release recommendation, if any. Judges then consider the recommendation plus any information provided by the parties to make a pretrial release decision.

Fast forward one year: The New Jersey judiciary is touting the success of its bail reform. About 80 percent of defendants who were charged by a warrant were released pretrial and the jail population dropped by 20 percent, as stated in the [2017 Criminal Justice Reform Report](#) (NJ Report).

But those benefits come with a hefty price tag that the judiciary can no longer afford. By the end of 2020, the pretrial services program (funded by court filing fees) will run out of money stated [Judge Glenn Grant](#), acting administrative director of New Jersey courts.

The pretrial services program, according to the NJ Report, has already received about \$67 million and needs another \$35 million for electronic monitoring, drug testing, and treatment services for defendants released on pretrial monitoring. What's more, the judiciary needs over \$2 million to develop an information technology system to handle the work of the program. On top of that, the judiciary needs additional employees to conduct risk assessments and monitor defendants. All this at a time when its revenue from court fees shrank by \$3 million in fiscal year 2017 and are down 2.4 percent in fiscal year 2018 — it's unclear if eliminating cash bail was a contributing factor.

Funding is not the only challenge facing New Jersey's bail overhaul. Bail reform is a direct threat to the [bail bond industry's](#) business so it comes as no surprise some bail underwriters and agents are staunch critics of bail reform. For example, the [American Bail Coalition](#) supports legislation by a New Jersey assemblyman seeking to abolish New Jersey's no-cash bail system. And a former U.S. solicitor general filed a [lawsuit](#) funded by the bail bonds industry challenging the constitutionality of New Jersey's bail reform on the basis that posting bail is less restrictive than house arrest and electronic monitoring; the pending case will have broad implications as more states flirt with bail reform.

Other critics argue that risk-assessment algorithms are [racially](#) and gender [biased](#). (We previously discussed the issue [here](#).)

Moreover, some law enforcement officials have emerged as outspoken opponents. Chief of Police Joseph Walker of Ringwood, NJ expressed frustration over bail reform in an [interview](#) with Ms. Megan Thompson of PBS's NewsHour Weekend as part of its *Chasing the Dream* series. Walker criticized bail reform for its lack of concern for the victims and stated police officers are frustrated with seeing people they arrest back on the streets quickly. Walker also pointed out that some people released under bail reform committed serious crimes. After complaints from Walker and other law enforcement officials, New Jersey expanded the list of crimes for automatic detention.

To date, it's unclear how many people skipped court or reoffended while on release under bail reform. But Passaic County Court Judge Ernest Caposela, one of the architects of bail reform, stated during an [interview](#) with Thompson that the threat to public safety under the pretrial release program is no more than under the monetary bail system.

“We did not institute criminal justice reform to put bail bondsmen out of business and to clear out the jails,” said Judge Caposela. “It was to respect the presumption of innocence, to design [] a system that was fair and honest.”

New Jersey's bail overhaul transformed an antiquated cash system and after one year, advocates are heralding its success. But success is not cheap and the new system comes with its own challenges and critics that New Jersey will have to address if it wants a bail system that doesn't discriminate against poor people.

CALIFORNIA ★ POLITICAL
REVIEW

THE FALLACY AND FALSE HOPE OF CALIFORNIA'S SENATE BILL 10—Ending of Bail

August 20, 2018 By Stephen Frank

If SB 10 passes, basically ending bail, will you find more minorities stuck in jail for years and months before trial? While some thugs, assault artists and others get out of jail and go into the shadows—under the bill if you are accused of a major crime, there is no bail and NO leaving of jail. At the end of the day, the accusation could cost your 1-2 years in jail till the trial.

“A key issue in the discussion of bail reform is the ability of courts to specify the terms of bail. State courts around the country are split on whether or not they can specify the method of posting the amount of the bail. Does “bailable by sufficient sureties” allow a judge to require the posting of cash, thereby restricting access to a bail company? Or, could a court require posting of real estate of a particular value, even if a defendant would otherwise choose to post cash or hire a bail company? This could occur conceivably if particular facts and circumstances warrant it in a given case.

No matter what, courts are in agreement on one thing — “sufficient sureties” means an amount of money. There is little debate on that point and has been generally accepted law since 1641 when the Massachusetts Body of Liberties codified it.”

The purpose of the Justice system is the protection of the innocent citizens. Bail protects the accused from the abuse of power by the system. Ending bail makes more victim s, limits reasons for the accused to show up for trial while keeping the innocent in jail for lengthy periods of time. SB 10 is a loser, all the way around.



THE FALLACY AND FALSE HOPE OF CALIFORNIA'S SENATE BILL 10

By Jeffrey J. Clayton, Executive Director, American Bail Coalition, 8/21/18

Proponents of bail reform in California recently touted the virtues of Senate Bill 10, holding a press conference in which they claimed the measure would eliminate money bail, once and for all. Like it or not, if passed in its current amended state, it would mean that having a friend or relative post bail, posting bail for yourself, or calling a local bail bondsmen would be completely eliminated as options.

Despite all the chest-pounding and rhetoric, there is a fundamental and important reason that this ill-conceived bill will never kill money bail in California: it would be against the state's constitution. Yes, pro-bail reformers have conveniently forgotten that the right to bail has been a part of the California Constitution since 1879.

In fact, New Jersey ran into an identical situation when it tried to implement a no-money bail system in 2017. It made the extremely unfortunate decision to change its constitution and eliminated the right to bail. In its place, they created a bi-polar system in which defendants would be released without the need for any form of financial security. Or else they would be detained with no possibility of bail at all. If this sounds ridiculous, you're right. The results have been a disaster.

The California Constitution states, "All persons shall be bailable by sufficient sureties..." There are exceptions for capital cases and a few other narrow exceptions where a prosecutor can seek preventative detention. However, it requires providing proof of danger to the community or the strong possibility of flight risk. These instances necessitate the establishment of a heightened burden of proof, clear and convincing evidence.

These tested and proven principles reinforce what the California Court of Appeals has previously noted: that preventative detention is rarely used — and that the state's constitution and traditions regarding the right to bail are largely sacrosanct.

A key issue in the discussion of bail reform is the ability of courts to specify the terms of bail. State courts around the country are split on whether or not they can specify the method of posting the amount of the bail. Does "bailable by sufficient sureties" allow a judge to require the posting of cash, thereby restricting access to a bail company? Or, could a court require posting of real estate of a particular value, even if a defendant would otherwise choose to post cash or hire a bail company? This could occur conceivably if particular facts and circumstances warrant it in a given case.

No matter what, courts are in agreement on one thing — "sufficient sureties" means an amount of money. There is little debate on that point and has been generally accepted law since 1641 when the Massachusetts Body of Liberties codified it.

Notwithstanding interpretations of how the terms of bail are spelled out, one thing is clear — Californians on all sides of the issue are assuming Senate Bill 10 will eliminate monetary bail if it becomes law. However, they're dead wrong and the legislation is already doomed. Grandstanding aside, the legislature could pass the bill and the governor could sign it — and any number of other bills — declaring money bail to be illegal to no effect. Without a change to the state constitution, bail cannot be eliminated by merely passing new statutes.

As someone intimately involved in the bail reform issue in California and nationally for quite some time, I've had lengthy conversations with lawmakers and stakeholders regarding its complexities long before Senate Bill 10 was ever presented. I specifically warned advocates that the state constitution would have to be changed if they were to implement the Washington, D.C. system, which they saw as model for California. I also advised them that opening the Pandora's Box of state constitutional provisions on bail would require addressing some very sticky details. This included dealing with the scope of when preventative detention (jail without the possibility of bail) would be allowed and under what circumstances. If not properly dealt with, anyone in California would be immediately released after their arrest.

Unfortunately, no one listened. The legislation has now been haphazardly amended at the eleventh hour, ignoring the constitutional elephant in the room. The sad truth is, after all the bombast and pomp, Senate Bill 10 is a completely worthless attempt at lawmaking. By itself, it cannot change the California Constitution, and even if it voted into law, it would be immediately struck down.

It should be maddening to all Californians that paid and elected officials on all sides of the issue are going to waste enormous amounts of time, resources and effort to engage in public policy debates on this poorly conceived piece of legislation that will do nothing to benefit their constituents.

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About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as a licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

About Stephen Frank

Stephen Frank is the publisher and editor of California Political News and Views. He speaks all over California and appears as a guest on several radio shows each week. He has also served as a guest host on radio talk shows. He is a fulltime political consultant.

Rome News-Tribune

Appeals court upholds Calhoun bail policy

By Diane Wagner, DWagner@RN-T.com August 23, 2018



Rome City Attorney Andy Davis

The city of Calhoun's policy on bail for misdemeanor offenses was upheld by a federal appeals court, clearing the way for resolution of a lawsuit dating back three years.

"We're still evaluating what it means for the portion of the case that's left, but we're pleased the Court of Appeals found the Standing Bail Order entirely constitutional," said Andy Davis, a partner with the Rome law firm Brinson Askew Berry.

The case, Walker v. Calhoun, has garnered national attention due to its potential to set precedent on Fourteenth Amendment rights of due process and equal protection for indigent defendants.

Calhoun officials hired the Rome firm in 2015 to defend against a class action suit brought by the Southern Center for Human Rights on behalf of Maurice Walker, who spent six days in jail awaiting a hearing because he couldn't afford to post a \$160 bond.

At that time, the city had a fixed bail schedule for traffic and misdemeanor offenses. Those who could pay were immediately released, those who couldn't were held for their court date.

After the lawsuit was filed, the city adopted a Standing Bail Order that set bond amounts according to the offense. It also guaranteed a hearing within 48 hours for indigent defendants asking to be released on their own recognizance.

The SCHR won injunctions against both policies as the case wended its way through the U.S. District Court for the Northern District of Georgia. Each time, Calhoun appealed.

A three-judge panel of the 11th Circuit Court of Appeals ruled 2 to 1 Wednesday that the first policy is unconstitutional, the second is not.

"The crux of the case was if the bail system is legal," Davis said, adding that "friend of the court" briefs supporting Calhoun had been filed on behalf of groups representing sheriffs and bail bondsmen.

The dissenting judge wrote that she would have upheld the injunction against the Standing Bail Order until Calhoun could show why it needs to hold people with little or no resources for two days.

"It seems unremarkable to say that being jailed for 48 hours is more than a mere inconvenience," Judge Beverly B. Martin wrote.

Walker, whom his attorney said is schizophrenic, was arrested Sept. 3, 2015, on a charge of pedestrian under the influence. Due to the Labor Day holiday, his case was not due to be heard until Sept. 11, but officials released him Sept. 9 after the suit was filed.

Davis said the case now moves back to the district court, where Walker is seeking damages for the time he spent in jail.

Chattanooga Times Free Press

Federal ruling in Calhoun, Ga., case 'upholds the core of America's bail system'

August 23rd, 2018 by [Tyler Jett](#) in Local Regional NewsRead Time: 4 mins.

In a ruling that impacts how quickly poor defendants can get out of jail across the country, U.S. Court of Appeals justices supported a bail system in Calhoun, Georgia, this week.

In a 2-1 decision, the justices said Wednesday that the city's bond rules are constitutional, even though defendants who can't afford bail remain behind bars for up to 48 hours after their arrests. Two days in jail does not cause unreasonable harm to a person's life, the justices argued.

To an extent, they said, governments can offer different services to people based on what they can afford.

"It upholds the core of America's bail system," said Jeff Clayton, executive director of the American Bail Coalition, which filed a brief in support of the city and is tracking similar federal cases.

Attorneys for Maurice Walker, a man arrested in Calhoun on a pedestrian-under-the-influence charge in September 2015, argued that the city's system is unconstitutional. Walker has a mental health disability and lived off a \$530 monthly Social Security check. His attorneys said he should not stay in jail longer than other defendants just because he can't afford bail.

At the time, defendants remained behind bars until Calhoun's next municipal court date, held every Monday. But in Walker's case, court was canceled on Labor Day. He would have to stay in jail for 11 days, though he was released after his attorneys sued the city.

Since then, Calhoun has created a new bond order that guarantees defendants go before a judge within 48 hours of their arrests. In theory, a judge will release them from jail if they prove they can't afford bond. (In practice, City Administrator Eddie Peterson said, Calhoun releases everybody without bond as soon they get booked at the jail while Walker's case plays out in federal court.)

At issue is the Equal Protection Clause of the 14th Amendment, which prevents discrimination. Here, Walker's attorneys say Calhoun's bond order discriminates against him because he is in poverty. While richer defendants get out of jail immediately, poor defendants such as Walker are stuck behind bars for up to two days.

But not every group is treated the same under the Equal Protection Clause. The law creates different levels of "scrutiny" based on what type of protection the group deserves. For example, race and gender groups receive "strict scrutiny," making it harder for a government agency to discriminate against them.

Walker's attorneys say poverty should be treated as a "strict scrutiny" group. This would mean a bail system could not discriminate based on wealth at all.

But the justices ruled Wednesday that people in poverty do not get that much protection. To an extent, they said, governments can discriminate based on wealth — as long as people are not entirely deprived of a service.

For example, the post office can legally offer faster delivery for an extra fee and the University of Georgia can charge students thousands of dollars every semester.

"The court would be flooded with litigation" if public agencies couldn't discriminate based on wealth, Justice Diarmuid O'Scannlain wrote in the majority opinion Wednesday.

"Innumerable government programs — heretofore considered entirely benign — would be in grave danger."

In the case of bail, Clayton said, the entire system would be upended if jails could not discriminate at all based on wealth.

"I don't even know what a less discriminatory alternative would be," he told the Times Free Press, "other than to say, 'Everybody gets out.' It would put the government in a box."

Writing the minority opinion, Justice Beverly Martin said ending discrimination in jails based on wealth would not extend to other government agencies, such as the post office. When it comes to protection of certain groups, like people in poverty, she wrote that the U.S. Supreme Court allows for "limiting principles" that apply to justice.

Martin argued that the two-day period a defendant will wait before seeing a judge can be crippling.

"Being jailed for 48 hours is more than a mere inconvenience," she wrote. "There are very real consequences for detained indigents. They can lose their jobs. They can lose their homes and transportation. Their family connections can be disrupted. And all this is to say nothing of the emotional and psychological toll a prison stay can have on an indigent person and her family members."

Court cases challenging the 48-hour rule for inmates in poverty have popped up across the country. Clayton said the issue began in January 2015, when police arrested Christy Dawn Varden outside a Clanton, Alabama, Walmart on charges of shoplifting, resisting arrest, failure to obey a police officer and possession of drug paraphernalia.

Under the city's bond order at the time, defendants could get released immediately if they paid \$500 per charge. In Varden's case, she needed to pay \$2,000. She also could wait to see a judge, but municipal court met only on Tuesday afternoons.

Attorneys with Equal Justice Under Law, which would later represent Walker in Calhoun, said Varden was physically and mentally handicapped. They said \$200 in food stamps represented her only monthly income. A month after they filed the lawsuit, U.S. Attorney General Eric Holder filed a statement of interest in the case, writing, "bail practices that are indifferent to an individual's ability to pay are incompatible with our Constitution."

That summer, Varden's attorneys and city officials reached a settlement. (Varden died a month before the settlement.) The city agreed to hold court hearings every 48 hours so poor defendants could explain their financial problems to a judge.

Since then, attorneys have challenged the 48-hour rule in other parts of the country. On Aug. 14, justices with the 5th Circuit of the U.S. Court of Appeals upheld a similar order from

Houston in a 2-1 decision. Meanwhile, a U.S. District Court judge will hold a trial on the 48-hour rule in San Francisco on Sept. 17.

Clayton said he expects the rule to stay in effect. But he would not be surprised to see the issue reach the U.S. Supreme Court, he said.

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CONSTITUTIONAL LAW

11th Circuit upholds cash bail system in Georgia town

BY [DEBRA CASSENS WEISS](#)

POSTED AUGUST 24, 2018, 1:51 PM CDT



AVN Photo Lab/Shutterstock.com.

A federal appeals court has upheld a revised cash bail system in Calhoun, Georgia, that required a hearing within 48 hours of arrest to determine whether a person can be released because he or she can't afford to pay the amount on a bail schedule.

The Atlanta-based 11th U.S. Circuit Court of Appeals ruled in [a 2-1 decision](#) on Wednesday, report the [Atlanta Journal-Constitution](#) and the [Daily Report](#). The decision overturned an injunction issued by Senior U.S. Judge Harold Murphy.

The judge committed legal error when he insisted on a 24-hour window for a hearing, according to the majority opinion by Judge Diarmuid O'Scannlain of the San Francisco-based 9th U.S. Circuit Court of Appeals, who was sitting by designation. Judge Murphy also erred by adopting an affidavit process for determining inability to pay, O'Scannlain said.

"There is no constitutional basis for the district court's imposition of its preferred method of setting bail," O'Scannlain wrote.

The court ruled in the case of Maurice Walker, an unemployed man arrested on a charge of being a pedestrian under the influence of alcohol. Under the system at the time, arrestees who couldn't make bail got a court hearing on the following Monday, as long as that day didn't fall on a holiday. Walker was arrested before Labor Day, which would have meant he wouldn't get a hearing for 11 days. He sued after spending five days in jail, and the city released him.

After the city shortened the hearing period, Murphy ruled that poor arrestees were treated differently than people of means, who could pay bail and be released without having to wait 48 hours.

The 11th Circuit rejected that argument in a section of the opinion that found no need to evaluate Walker's claim using heightened scrutiny.

The majority said that, under the city's bail order, "Walker and other indigents suffer no 'absolute deprivation' of the benefit they seek, namely pretrial release. Rather, they must merely wait some appropriate amount of time to receive the same benefit as the more affluent. Indeed, after such delay, they arguably receive preferential treatment, in at least one respect, by being released on recognizance without having to provide any security."

If Walker were correct that wealth should be given the same level of scrutiny as claims based on race, sex and religion, "the courts would be flooded with litigation," the majority said.

"If the postal service wanted to continue to deny express service to those unwilling or unable to pay a fee, it would have to justify that decision under the same standard it would have to meet to justify providing express service only to white patrons," the court said. "The University of Georgia would be unable to condition matriculation on ability to pay tuition unless it could meet the same constitutional standard that would allow it to deny admission to Catholics."

The American Bail Coalition applauded the decision in [a press release](#). Sarah Geraghty of the Southern Center for Human Rights told the Daily Report that the lawyers for the plaintiffs were considering whether to ask for a hearing of the full 11th Circuit.

The ABA had [filed an amicus brief](#) in the case that urged the 11th Circuit to affirm the trial court order enjoining Calhoun's bail system. The ABA House of Delegates [adopted a resolution](#) in August 2017 that opposes bail schedules and backs policies favoring release on unsecured bonds.

The case is *Walker v. City of Calhoun*.



Short Circuit: A Roundup of Recent Federal Court Decisions

Feeding the homeless, drawing the Prophet Muhammed, and Kim Kardashian's plea for executive clemency.

[John K. Ross](#) | Aug. 24, 2018 3:30 pm

Please enjoy the latest edition of [Short Circuit](#), a weekly feature from the Institute for Justice. Ratified 150 years ago, the 14th Amendment has been called America's "Second Founding." On September 21, IJ and the Law and Liberty Center at Antonin Scalia Law School will co-host a symposium to celebrate, discuss, and debate the Amendment's dramatic history, contemporary significance, and contested future. Please join us! The event features an all-star lineup of historians, legal scholars, and federal and state appellate judges—and a re-argument of *the Slaughter-House Cases*. [Register here](#).

"Consider two people, one who has money and the other who does not. They are arrested for the same crime at the same time under the same circumstances ... [and] would have the identical bail amount The person who has money pays it and walks away. The indigent can't pay, so he goes to jail." Which is a serious deprivation of liberty, writes Judge Martin, dissenting from the [Eleventh Circuit](#)'s rejection of a preliminary injunction over Calhoun, Ga.'s money bail policies.

John K. Ross is a researcher and editor of [Short Circuit](#) for the Institute for Justice, and a former *Reason* intern.

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THE INDIANAPOLIS STAR

INDYSTAR★COM | SEE WHAT HAPPENS

These Indiana counties stopped requiring bail. Here's how that's worked.

Billy Kobin, Indianapolis Star

Published 6:00 a.m. ET Aug. 26, 2018 | Updated 1:00 p.m. ET Aug. 27, 2018



(Photo: Billy Kobin/IndyStar)

Nearly two years ago, 11 Indiana counties, including Hamilton and Hendricks, decided to try a different approach to handling those arrested and awaiting trial.

Instead of setting money bail amounts, judges would use risk assessments to decide whether defendants should be held in jail or, more likely, simply be allowed to go home on the promise they would return for their next court date.

The upside? Jails would be less overcrowded with low-risk inmates who had been accused of a crime, but not yet convicted, and, thus, also save the taxpayer cost of incarcerating them.

It was also seen as a more humane way to deal with low-risk offenders who struggle to come up with the cost of bail — a scenario that disproportionately has kept minorities behind bars.



Hendricks County Courthouse, 51 W. Main St., Danville. Hendricks County is one of 11 Indiana counties piloting a pretrial risk assessment program. (Photo: Billy Kobin/IndyStar)

The downside is that potentially dangerous criminals might be set free and commit more crimes before their next court date. That point was argued vehemently by the estimated \$2 billion bail bond industry.

And while civil liberties groups largely favor eliminating bail, they do have concerns that risk assessment tools also could be flawed in a way that disproportionately denies the release of minorities.

So, two years later, has it worked out?

Officials in Hamilton and Hendricks counties say yes, that generally the new program has kept low-risk offenders out of jail, while still keeping the high-risk offenders locked up.

"It's been less about reducing numbers (in jail) than getting people in the right places," said Hendricks Superior Court Judge Stephenie LeMay-Luken. "People that need to be in the jail are there."

What the data shows

Available data, while somewhat limited, seems to back up that assertion.

Hamilton County's pilot program began June 1, 2016, and Hendrick County's pilot launched in October 2017.

Hamilton County assessed 2,166 defendants in 2017 and placed 1,708 on pretrial supervision, according to figures provided by Stephanie Ruggles, the county's director of pretrial services. In other words, nearly 79 percent of defendants were released without having to pay bail.

Ruggles said, prior to the pilot program, bail was the primary mechanism used to release offenders, and though statistics were not immediately available, she said the new system has reduced the number of low-risk defendants being held in jail.

Of those who have been released, 91.2 percent made all of their scheduled court appearances. Ruggles said she is "happy with that" figure and that local judicial officials believe failure to appear (FTA) rates have decreased since the pretrial program began.

But it's not definitive. Hamilton County was not tracking FTA rates prior to the pilot project.

The "Overall Safety Rate," which measures how many defendants are not charged with new crimes during the pretrial stage, was 89.4 percent.

For released offenders, Hamilton County uses four levels of supervision, while Hendricks County uses three levels. At the lowest level, defendants are released on their own recognizance and expected to show up to their next court date.



The historic Hamilton County Courthouse, 33 N. 9th St., Noblesville. Hamilton County is one of 11 Indiana counties participating in a pretrial risk assessment pilot program meant to reduce the use of money bail in court. (Photo: Joe Vitti/IndyStar 2012 file photo)

The higher levels require offenders to meet with pretrial officers as often as every other month or up to twice each month while awaiting trial.

Released defendants receive email, phone call and text message reminders about upcoming court dates, which officials said also help reduce FTA's.

In Hendricks County, 70 defendants have been released under "basic supervision" — the lowest level — since October 2017, said Nicholas Rice, the county's pretrial services officer. Of those, two defendants failed to appear for court dates and one defendant was arrested for a new offense.

Under the highest level of "enhanced supervision," Rice said 132 defendants have been released since January, with three FTA's and 10 new arrests occurring.

But, again, the results are positive: FTA rates for all criminal cases in Hendricks County — including pretrial supervision cases — declined from 19 percent in April 2017 to 10 percent in July 2018, according to Catherine Haines, the county's court administrator.

How assessment works

The state pilot program [began](#) in 2016 after the Indiana Supreme Court issued Criminal Rule 26, which encouraged state courts to release low-risk offenders without bail.

The nine other counties that volunteered for the pilot program are: Allen, Bartholomew, Grant, Jefferson, Monroe, Porter, St. Joseph, Starke and Tipton.

But it's likely that all Indiana counties will follow suit. Gov. Eric Holcomb signed a separate bill in 2017 that asks all Indiana courts to adopt evidence-based risk assessment rules by 2020.

The 11 counties began their pilot programs at different points throughout 2016 and 2017, with variations in how each county's program operates.

Judges still have the latitude to set bail or hold offenders if they are deemed a flight risk or danger to themselves or others.

To assess offenders, each pilot county utilizes the Indiana Risk Assessment System Pretrial Assessment Tool (IRAS-PAT). Counties may use additional assessment tools.

Trained staff administer the IRAS-PAT during a brief face-to-face interview with an offender in jail following an arrest. The assessment includes seven questions on criminal history, employment, housing stability and drug use.



Proponents of bail reform argue pretrial risk assessments and the release of low-risk offenders will help reduce jail overcrowding . *(Photo: Charlie Nye/IndyStar 2008 file photo)*

Staff also check out-of-state criminal records.

The offender's answers are verified and scored, with the final score meant to predict the likelihood the offender will fail to appear in court and reoffend while on release. Offenders are classified as low, moderate or high risk.

In Hamilton County, Ruggles said 50.3 percent of defendants in 2017 were deemed low risk, 39.8 percent were moderate risk and 9.9 percent were high risk.

An initial hearing is held the same day or the next business day after the arrest, with defense attorneys made available for offenders. Information from the completed IRAS-PAT is considered during the hearing.

Depending on the seriousness of the offense and assessed risk, judges decide if offenders are released on supervision or held in jail with a bail amount until their next trial.

Hamilton County judges agreed with the no-bail supervision recommendation in 30 percent of the cases. In another 61 percent of the cases the judge agreed to no bail but ordered stronger supervision than was recommended.

"There is no evidence that if I post a cash bond that I'm going to show up in court and not be a threat to the public safety of my community," LeMay-Luken said.

National movement growing

Pretrial risk assessment tools have existed for more than 50 years, but their usage has come into the national spotlight more recently as the movement to end cash bail gains steam.

Several court rulings around the country have upheld efforts to dismantle the bail system. Red and blue states alike have approved bail reforms.

Kathryn Dolan, chief public information officer for the Indiana Supreme Court, said the most recent data showed 11,926 people were in Indiana jails on "pretrial" status in September 2017. That represented 56 percent of the state's total jail population.

The pretrial assessments are meant to lower that percentage.

National studies on risk assessment tools have reached mixed conclusions. Some studies have shown that standardized risk assessment tools can more accurately predict outcomes for offenders when compared with unstructured assessments or a reliance on judgement.

Studies also have shown detaining low- and moderate-risk defendants in jail for just two to three days increased the chances those defendants reoffend in the future.

However, a paper in the "Washington Law Review" this year said pretrial risk assessment instruments, as they are currently used, "cannot safely be assumed to advance reformist goals of reducing incarceration and enhancing the bail system's fairness."

Bail industry pushes back

Several Indiana bail bondsmen told IndyStar pretrial risk assessment programs may work fine for minor crimes but otherwise cost taxpayers more in the long run.

The bondsmen said they save taxpayer dollars by ensuring their clients show up to court and that law enforcement do not have to spend resources finding offenders.

"I make 1,500 calls a week just to make sure my clients are still in Indiana and going to court," said Anthony DeLaughter, co-owner of DeLaughter Bail Bonds, which operates in 55 Indiana counties.

Tyce Carlson, owner of Uptown Bail Bonds in Noblesville, said business is "the worst it's ever been" for bail bondsmen, with his business down about 80 percent since the pretrial risk assessment program began in Hamilton County.

"This is taking (bail bondsmen's) livelihood away from them," Carlson said. "If criminals know they can do a crime and get out within hours without paying any money, they are going to commit crimes."

But LeMay-Luken, the Hendricks County judge, said the opioid crisis, not pretrial release, is driving any crime increases.

Staff from Hamilton and Hendricks counties said sheriffs, prosecutors, defense attorneys, judges, counselors and mental health experts are among those present in discussions on how to improve the pretrial system.

"The communication between all local stakeholders has increased," Ruggles said. "It's really helped close gaps within our local criminal justice system."

Still, some past cases highlight how pretrial release does not always function perfectly.

In April 2017, an 18-year-old Indianapolis man was arrested in connection with multiple home break-ins in Fishers. Derrick Johnson Jr. was released from jail in Hamilton County as part of the pretrial release program and then arrested in Marion County in May and June for a slew of offenses.

Instead of being returned to Hamilton County for violating his release conditions, Johnson was released on bail on two occasions from Marion County Jail. He failed to appear for his Hamilton and Marion County hearings at the start of June and eventually was [fatally shot by a homeowner during an alleged Castleton-area home invasion](#) on June 6, 2017.

Ruggles said Hamilton County failed to receive notice on Johnson's Marion County arrests due to a mistake in how the cases were linked in the state's Odyssey case management system.

There also is the lingering concern that, while the no-bail system is better, the risk assessment tools may not root out embedded racism.

In July, a national coalition of more than 100 civil rights, digital justice and community organizations released a statement highlighting their concerns with predictive risk assessment tools that contribute to "racial disparities across the criminal justice system."

More specifically, there is concern that questions on prior arrests and housing stability can still disproportionately affect the "risk scores" of poor and minority defendants who advocates say have historically been unfairly treated by the criminal justice system.

Jeff Clayton, executive director of the American Bail Coalition, said the use of predictive tests to assess and place people into risk groups is troubling.

"We just don't think that's good for individual liberties," Clayton said.

That said, Hamilton Superior Court Judge Gail Bardach said the pilot counties are not solely relying on the IRAS-PAT to make release decisions. The collection of data during the pilot program is also helping counties evaluate the effectiveness of risk assessment tools, Bardach added.

"There is a whole lot more information that goes into (release) recommendations than ever goes into someone who pays a bondsman," Bardach said.

Moving forward

The 11 pilot counties are working with IU Public Policy Institute researchers to validate the IRAS-PAT and collect data on how counties are assessing offenders.

The validation process began in 2017 and studies how accurately the IRAS-PAT predicts failures to appear and new offenses during pretrial, said Eric Grommon, an associate professor in IUPUI's School of Public and Environmental Affairs involved in the validation study.

Grommon said the validation process is ongoing, making it too early to definitively say if the IRAS-PAT is effective and not discriminating against offenders based, for example, on racial differences.

A statewide pretrial work group also is discussing ways to improve the program. Grant Circuit Court Judge Mark Spitzer, who chairs the work group, said early data is "very promising" and counties are releasing individuals without money bail more often.

"There doesn't seem to be a significant negative impact on public safety," Spitzer said, adding funding concerns still exist.

Pilot counties receive funding from county sources as well as the Indiana Department of Correction and Indiana Supreme Court.

Hamilton County's pretrial services budget is just under \$570,000 per year, Ruggles said, which primarily covers costs for Ruggles, five pretrial officers and defense attorneys provided at initial hearings.

Hendricks County budgets approximately \$75,000 to cover Rice's position. LeMay-Luken said more funding would allow the county to assess offenders over weekends versus holding them in jail.

The National Institute of Corrections and Indiana Office of Court Services have assisted the counties in implementing their pilot programs.

Nine other counties, including Marion County, have contacted the state for help on developing pretrial assessment programs, said Dolan, the Indiana Supreme Court spokeswoman.

Officials said while not they are not perfect, pretrial risk assessments are helping ensure ability to pay does not determine who gets out of jail.

"It's working well, and to my knowledge, judges are favorably impressed with the program," Bardach said. "We are keeping the right people in jail."

Call IndyStar reporter Billy Kobin at (317) 444-6123. Follow him on Twitter: [@Billy_Kobin](#)



Both anti-bail groups and the bail industry oppose Senate Bill 10

By Katy St. Clair, kstclair@thereporter.com

POSTED: 09/01/18, 5:19 PM PDT | UPDATED: 2 DAYS AGO

Chuck Turner is a rare breed: One of the last independent bail bondsmen in Solano County. His business, Solano Bail Bonds, stands to come to a halt if the senate bill that Governor Jerry Brown signed last week, SB 10, comes to fruition next year.

The only thing standing between a business like Turner's and the death of California's money bail system is a petition that is going around to put the fate of the measure in the hands of the voters. Californians Against the Reckless Bail Scheme hope to gather 365,880 signatures within 90 days to put it on an upcoming ballot.

SB 10 was originally crafted to do away with the state's money bail system, which opponents say is unfair to the poor-- those with money for bail can be released from detention while those that can't afford to post any remain in jail.

The bill was initially hailed by criminal justice reform advocates like public defenders and the ACLU, but at the last minute it was rewritten into something that was not only opposed by the bail industry but also people who promote bail reform. Opponents say that SB 10 will replace California's money bail system with something much worse-- greatly expanded preventative detention. Their fear is that far more people will be locked up before trial than ever before.

Jeffrey Clayton, executive director of the American Bail Coalition, opposes the bill, which he said was rewritten and passed so fast that no one had a chance to do anything about it before "special interests" got their hands on it. "Since there was no committee process, there was no way to know," he said.

SB 10 has now made odd bedfellows of those who opposed the state's money bail system and the bail industry, both of which do not support it.

But bondsman Turner stands to lose the most locally in the short run. "It's going to put hundreds of thousands of people out of work," he says frankly. He also argues against the idea that the bail system discriminates against the poor. "Poor people are my only customers," he said.

Both Turner and Clayton would have liked to see a reorganization of the bail schedule instead of throwing the baby out with the bathwater, so to speak. They both point to bail amounts for people accused of domestic violence; they used to be around \$10,000 but now can be as high as \$35,000.

Others who oppose bail reform question whether or not "failure to appear" rates will skyrocket, but studies have shown that is not the case. In Washington D.C., for example, they do not have a money bail system. 90 percent of people show up for their court dates, and only 10 percent of people arrested are rearrested after release, according to the Washington Post.

Solano County Public Defender Lesli Caldwell did not respond to questions for comment for this story, but San Francisco Public Defender Jeff Adachi wrote an op-ed in the Sacramento Bee decrying the bill. "SB 10 presumes that a person will be detained and requires that they prove why they should be released," he wrote. "The bill allows prosecutors to rely on hearsay statements and police reports in deciding who should be detained, regardless of actual risk."

To those that oppose this bill, it challenges the idea of innocent until proven guilty.

If nothing stands in the way of SB 10, it will go into effect in October of 2019. Until then, different organizations and forces will continue to battle it out in "court" of public opinion.

Los Angeles Times

Aug. 29, 2018, 1:51 p.m.

CALIFORNIA LEGISLATURE

By JAZMINE ULLOA

Voter referendum drive launched to block overhaul of California bail system



Gov. Jerry Brown hands a copy of the bail bill he just signed to state Sen. Bob Hertzberg, surrounded by other supporters of the measure. (Rich Pedroncelli / Associated Press)

One day after Gov. Jerry Brown signed landmark legislation overhauling the state's money bail system, the California bail industry is fighting back.

A coalition of bail industry associations, crime victims groups and other opponents have launched a voter referendum drive in an attempt to block the

implementation of the new law. They have roughly three months to collect and submit an estimated 366,000 signatures to qualify the measure.

If they are successful, the law would be put on hold and weighed on the November 2020 ballot. The law, which will go into effect on Oct. 1, 2019, is expected to dismantle a bail-bond industry that includes bounty hunters, surety companies and about 3,200 registered bail agents.

The legislation virtually eliminates the payment of money as a condition of release and replaces the money bail system with one that grants judges greater power to decide who should remain incarcerated without possibility of release in a practice known as “preventive detention.”

"Senate Bill 10 has brought together scores of individuals and groups from across the political spectrum — conservative to progressive — to agree on one thing: They all hate it and think it's a terrible law," Jeff Clayton, a spokesman for the coalition, said in a statement.

Top state officials, judges and activists on Tuesday hailed the new law, which puts California at the forefront of a national push to stop courts from imposing a heavy financial burden on defendants who have not been convicted of a crime and have yet to face a jury. But questions remain about its effect on the criminal justice system, and even some of its most passionate supporters worry it could lead to the incarceration of more people for longer periods of time.

The blowback continued Wednesday as the national civil rights nonprofit Color of Change released a statement urging other states not to follow California's legislation.

“Across the country, politicians are hijacking meaningful efforts to end money bail, led by black and brown communities, and turning them into empty

reforms that uphold the status quo,” said Scott Roberts, the organization’s senior campaign director.

Under Senate Bill 10, counties will have to establish their own pretrial services agencies, which would use “risk-assessment tools,” or analysis, to evaluate people arrested to determine whether, and under what conditions, they should be released.

Only people charged with certain low-level, nonviolent misdemeanors — a list of charges that can be further narrowed by county — would be eligible for automatic release within 12 hours of being booked into jail. Judges and pretrial offices will weigh the release of all other defendants sorted into low-, medium- or high-risk categories based on criminal history and other criteria.

Bail agents and bounty hunters on Wednesday vowed to continue fighting the law, saying bail was needed to hold people accountable and adding that members of the industry provide vital services to counties. Some clients cycle in and out of jail, bailing out with different companies, they said, arguing that county pretrial agencies won’t have the resources to bring them back to court.

But complaints against the bail industry in California have significantly increased, as bail agents and bounty hunters undergo little training and face limited oversight. Supporters of the new law say the system is ready for an overhaul.

“By eliminating cash bail, we are saying that those with the least ability to pay should not be released or incarcerated solely on the basis of their wealth or poverty,” Assembly Speaker Anthony Rendon (D-Paramount) said in a statement shortly after Brown signed the legislation. “SB 10 is only one leg of the long journey toward perfecting our justice system, but it is an important one.”



LAW

California Becomes First State To End Cash Bail After 40-Year Fight

August 28, 2018 10:49 PM ET

[VANESSA ROMO](#)



Gov. Jerry Brown holds a copy of a bill to end bail he signed Tuesday, Aug. 28, in Sacramento, Calif. The bill, co-authored by state Sen. Bob Hertzberg, D-Van Nuys, third from right, and Assemblyman Rob Bonta, D-Alameda, right, makes California the first state to eliminate bail for suspects awaiting trial. It goes into effect in October 2019.

Rich Pedroncelli/AP

California will become the first state in the nation to abolish bail for suspects awaiting trial under a sweeping reform bill signed by Gov. Jerry Brown on Tuesday.

An overhaul of the state's bail system has been in the works for years, and became an inevitability earlier this year when a California appellate court [declared the state's cash bail system unconstitutional](#). The new law goes into effect in October 2019.

"Today, California reforms its bail system so that rich and poor alike are treated fairly," Brown said in a [statement](#), moments after signing the [California Money Bail Reform Act](#). The governor has waited nearly four decades to revamp the state's cash bail system. In his 1979 State of the State Address, Brown argued the existing process was biased, favoring the wealthy who can afford to pay for their freedom, and penalizing the poor, who often are forced to remain in custody.

"Our path to a more just criminal justice system is not complete, but today it made a transformational shift away from valuing private wealth and toward protecting public safety," Sen. Robert Herzberg, a co-author of the bill, said in a statement. "California will continue to lead the way toward a safer and more equitable system."

Washington, D.C., already has a cashless bail system. Other states, including New Jersey, have passed laws that reduce their reliance on money bail. And other states are considering making similar changes.

Under the California law those arrested and charged with a crime won't be putting up money or borrowing it from a bail bond agent to obtain their release. Instead, local courts will decide who to keep in custody and whom to release while they await trial. Those decisions will be based on an algorithm created by the courts in each jurisdiction.

In most nonviolent misdemeanor cases, defendants would be released within 12 hours. In other instances, defendants will be scored on how likely they are to show up for their court date, the seriousness of their crime, and the likelihood of recidivism.

Some people could be released on other conditions, including monitoring by GPS or regular check-ins with an officer.

The goal of the legislation is to eliminate human bias in court proceedings, but critics argue the new system that will be created by the courts runs the risk of perpetuating discrimination.

Meanwhile, the American Civil Liberties Union of California, an original co-sponsor of the bill, pulled its support, arguing that last-minute changes give judges too much discretion in determining under what circumstances people will be released or kept in custody.

"We are concerned that the system that's being put into place by this bill is too heavily weighted toward detention and does not have sufficient safeguards to ensure that racial justice is provided in the new system," the ACLU's Natasha Minsker told NPR.

Raj Jayadev, co-founder of advocacy organization Silicon Valley De-Bug, said like the ACLU, his group is a former supporter of the bill. Ultimately, as it is written, he [told the Sacramento Bee](#), the law discriminates against the poor.

"They took our rallying cry of ending money bail and used it against us to further threaten and criminalize and jail our loved ones."

And there's the end to the state's bail bond industry.

"We're gone. We're done. As of today the bail industry will start shuttering their doors," Topo Padilla, President of the Golden State Bail Agents Association told NPR. The Wall Street Journal reports that that could affect 7,000 jobs, though Jeff Clayton, president of the American Bail Coalition, told NPR station KQED [that it's likely that the bail industry will sue](#), putting the law on hold.

Padilla contended the law is bad for the people of California.

The law "straps the taxpayers with funding 100 percent of all pretrial release programs," and will lead to increasing detentions of people who otherwise would post bail, he said.

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The bill will replace bail with a risk-assessment system, although it's still unclear how the system will work. (Shutterstock Photo)

Gov. Brown Signs Bill Ending Bail Before Trial

AP News and gvwire August 28, 2018

SACRAMENTO — California will become the first state to eliminate bail for suspects awaiting trial under a bill signed Tuesday by Gov. Jerry Brown.

The bill will replace bail with a risk-assessment system, although it's still unclear how the system will work. It will take effect in October 2019.

Brown's signature gives the state's Judicial Council broad authority to reshape pretrial detention policies.

"Today, California reforms its bail system so that rich and poor alike are treated fairly," Brown said.

Each county will use the council's framework as a basis to set its own procedures for deciding whom to release before trial, potentially creating a patchwork system based on where a suspect lives.

Most suspects arrested for nonviolent misdemeanors will be released within 12 hours of being booked under the new law. Those facing serious, violent felonies will not be eligible for pretrial release.

24 Hours to Determine Release

The legislation gives officials 24 hours to determine whether other suspects should be released before trial. That time can be extended by 12 hours if necessary.

Some criminal justice reform advocates worry defendants will spend weeks in jail while their lawyers try to prove they deserve to be set free.

Opponents of the legislation say it gives judges too much power. Some worry dangerous people will go free and won't return for trial.

Supporters, including the Judicial Council headed by the state Supreme Court's chief justice, say the change will end the unfair practice of imprisoning people simply because they are poor. Incarceration should instead depend on the risk a defendant poses if they are released, they argue.

Newsom and Cox on Opposite Sides

Lt. Gov. Gavin Newsom, who is pitted against Republican John Cox in the race to succeed Brown, said that a "person's checking account balance should never determine how they are treated under the law. Cash bail criminalizes poverty and with Governor Brown's signature today, California has opened the door to pursue and perfect a just pre-trial system."

During his campaign, Cox has said that he opposes changes to the bail system.

The bail industry also opposed the bill, labeling it as extreme.

"I think the bail industry and the research shows we do our best work, in terms of reducing long-term fugitive rates and returning people to court when they flee, in high-risk felony cases," Jeff Clayton, director of the American Bail Coalition, a trade group, [told NPR last year](#). "We don't prevent people from committing crime, but neither do any of the other types of release."

Other states such as New Jersey and New Mexico have overhauled their bail systems, although neither state has completely eliminated bail.

The Judicial Council is the policy-making body for California's courts. It creates rules and procedures to ensure consistency across the state.



Bail bond industry mobilizes against Calif. law eliminating cash bail

BY REID WILSON - 08/30/18 01:11 PM EDT



Just hours after California Gov. Jerry Brown (D) signed legislation eliminating cash bail, the bail bond industry filed a referendum that will ask voters whether to overturn the law.

The measure Brown signed on Tuesday would make California the first state to eliminate cash bail in favor of a series of assessments that judge the likelihood that someone who has been arrested will return to court.

It had been hailed by advocates of criminal justice reform, who say the bail system as it currently exists keeps too many lower income people in custody if they cannot afford to make bail.

But the measure generated a swift response from the bail bond industry. On Wednesday, a group calling itself Californians Against the Reckless Bail Scheme said it would file a referendum seeking to challenge the measure, known as Senate Bill 10.

“Senate Bill 10 has brought together scores of individuals and groups from across the political spectrum — conservative to progressive — to agree on one thing: they all hate it and think it’s a terrible law,” said Jeff Clayton, a spokesman for the coalition.

The referendum was filed with the California Attorney General’s Office, which must first review it before clearing it for circulation, and by Sacramento attorney Thomas Hiltachk, who served as lead counsel to former Gov. Arnold Schwarzenegger (R).

Supporters of the referendum to repeal the law now have 90 days to collect just over 366,000 valid signatures. If they do so, Senate Bill 10 will be put up for a vote on the November 2020 ballot.

Until then, the law — scheduled to go into effect in October 2019 — would be put on hold.

Beth Chapman, the head of the Professional Bail Agents of the United States and a co-star of the reality show “Dog the Bounty Hunter,” said the new law would put bail bondsmen in California out of business.

“This is a mom and pop industry that’s been going on for over 200 years in this country,” Chapman said in an interview Thursday. “What Senate Bill 10 is going to do is basically put a nail in their coffin.”

Chapman said an end to cash bonds would mean law enforcement would be forced to release those arrested for drug crimes, petty crimes or even more serious violations in a matter of hours.

“The victims will still be in the hospital when these guys are released from jail,” she said.

The new law is the latest in a series of measures California has adopted to reform its criminal justice system. The first of those steps came as the fiscally crunched state tried to save money by cutting its prison population, in part by reducing sentences and reclassifying some crimes from felonies to misdemeanors.

Later, criminal justice reform advocates seized on cash bonds as an unjust policy that keeps low-income people incarcerated longer than those who have means to pay.

“Our path to a more just criminal justice system is not complete, but today it made a transformational shift away from valuing private wealth and toward protecting public safety,” state Sen. Bob Hertzberg (D), the bill’s lead author, said when Brown signed the measure. “We are creating a system that is fairer for all Californians.”

Hertzberg’s office declined to comment on the referendum.

California voters have been asked to overturn acts of the legislature just 28 times since the state gave citizens the right to challenge laws.

This year, voters will decide whether to overturn a gas tax increase passed by the Democratic-led legislature in Sacramento, a referendum placed on the ballot by Republicans including U.S. Rep. Mimi Walters (R) and House Majority Leader Kevin McCarthy (R).

“Now we want the citizens to get a chance to say no, no, no, we’ve gone too far,” Chapman said. “I just can’t imagine that the citizens of California are going to want this much crime.”



News

The following article was posted on September 5th, 2018, in the Santa Maria Sun - Volume 19, Issue 27

Newly signed bail reform bill faces challenges

BY SPENCER COLE

A newly signed bill ending cash bail in California drew a relatively mixed reaction from state representatives, activists, and local law enforcement.

On Aug. 28, Gov. Jerry Brown signed Senate Bill 10, or the California Money Bail Reform Act, into law, effective Oct. 1, 2019.

"This a transformative day for our justice system," state Chief Justice Tani Cantil-Sakauye stated after Brown's signing. "Our old system of money bail was outdated, unsafe, and unfair."

California officials aligned with the effort expressed their support as the week progressed, including gubernatorial candidate Gavin Newsom. "A person's checking account balance should never determine how they are treated under law," he stated, adding the practice of cash bail "criminalizes poverty."

The state's branch of the American Civil Liberties Union (ACLU) originally endorsed the bill but reversed course following late amendments. In a statement, the organization said SB 10 failed to create substantial reductions in pretrial detention and didn't "provide sufficient due process nor adequately protect against racial biases and disparities" in the justice system.

"We oppose the bill because it seeks to replace the current deeply flawed system with an overly broad presumption of preventative detention," the ACLU said. "This falls short of critical bail reform goals and compromises our fundamental values of due process and racial justice."

Santa Barbara County District Attorney Joyce Dudley told the *Sun* that lawmakers in Sacramento had to find a compromise that could get as many parties as possible on board.

"It might be one of those situations where nobody is completely happy right now, but I do think the spirit of wanting to change this law is the right spirit," she said. "It just didn't seem fair to me that poverty should be the reason you'd be kept in custody."

Locally, opinions were mixed about a law that its opponents say are nebulous and will kill California's bail industry in favor of taxpayer-funded programs.

"It's putting us out of business," said Tim Romero, a Santa Maria bail bondsman with more than 20 years of experience. Romero's company, Santa Maria Bail Bonds, has been around since the 1970s. It's stayed in his family's hands that entire time.

There are 17 licensed bail agents operating in the county, according to the California Department of Insurance.

Romero told the *Sun* he thought SB 10 would result in more people being held in jail longer without the opportunity to post bail.

Dudley did not dismiss that potential adverse side effect.

"Much of this decision about letting people go or keeping them incarcerated is going to be based upon judicial discretion," she said, "and if judges end up incarcerating more people, then the jail population will increase."

The Sheriff's Office has long grappled with housing and staffing issues at the Santa Barbara County Jail. A grand jury report critical of the office's practices released earlier this year pointed to the jail as a cause for concern due to those problems. And now the office and its sheriff, Bill Brown, will essentially have to take a wait-and-see approach as the law goes into effect.

"I don't think that the sheriff is going to be in a really good position to know at this point how that will affect the number of people inside the jail," Dudley said.

In an email, Brown told the *Sun* that the impact to the jail system at this point was "unknown," citing rules, crime definitions, and procedures that need to be established and put into action by California's Judicial Council and counties.

"To some extent, the devil will be in the details that have not yet been developed," Brown wrote. "Significant additional funding will also need to be provided by the state to the courts and the counties for appropriate pretrial screenings and supervision."

Brown said that if the counties will have available funding for the programs replacing cash bail, he would be "guardedly optimistic the new system will hold serious and serial criminals more accountable than the current one, thereby enhancing public safety."

He called the bail reform move "a paradigm shift."

SB 10's opponents still have a pathway to repeal it, assuming they gather enough signatures for a ballot initiative in 2020. The law would then be put on hold until voters decided its fate.

On Aug. 29, the American Bail Coalition (ABC) came out in support of just such an initiative it said was launched that day. The effort is led by the coalition's industry partners and some victim advocacy groups.

"We are building a substantial wall that will hopefully prevent this reckless legislation from ever becoming law," ABC Executive Director Jeff Clayton said.

The group and its allies have about three months to gather more than 366,000 signatures. One of those adversaries could be Assemblyman Jordan Cunningham (R-San Luis Obispo), of Templeton. The 35th District Assemblyman declined an interview on bail reform by the *Sun's* sister paper, *New Times*, in April of this year, but he submitted a letter to the paper revealing some of his beliefs on the subject.

In the letter, Cunningham, a former prosecutor, said the law would put public safety and crime victims at risk, impose "considerable unfunded costs on local governments" for the establishment of pretrial agencies," and would remove an incentive for felons to appear in court.

"This proposal, in my view, ultimately would make our communities less safe," he wrote.

Cunningham voted "no" on the last iteration of the bill.

District Attorney Dudley agreed with Cunningham that the incentive for some criminals to return to court could be diminished by the law.

"If you don't come back for your court date, then a warrant is issued, and you can be taken into custody as soon as law enforcement has contact with you. That is really the only incentive for people to come back," she said.

Many people do return to court on their scheduled day, and Dudley said this was because they think it's the right thing to do and they "want to deal with the charge that they have in front of them." Others simply want to make sure they get some of their bail money back.

However, there will always be outliers. And no-cash bail could create issues for law enforcement if felons stop showing up to court.

"Those that would not return but would if they could get their bail money back, I'm afraid that those will be criminals and instead of being in custody, they'll be on our streets," Dudley said.

Staff Writer Spencer Cole can be reached at scole@santamariasun.com.

Bail Bond Industry Launches Attempt to Block SB 10

By Arianna Marie
August 30, 2018



After Gov. Jerry Brown signed SB 10, the bail reform bill, thousands of bail bonds businesses were suddenly put at risk.

The bill eliminated money bail across California and will implement a new bail system based on "risk assessment," which will go into effect on Oct. 1 2019.

Now the bail bond industry is fighting back, a coalition of bail industry associations, crime victims groups and other opponents have launched a voter referendum drive in an attempt to block the implementation of the new law.

They have roughly three months to collect and submit an estimated 366,000 signatures to qualify the measure.

If they are successful, the law would be put on hold and weighed on the November 2020 ballot.

Read the full story at the [LA Times](#).

Jeffrey Clayton, Executive Director of the American Bail Coalition talked to John and Ken Thursday about their efforts and the signatures needed, listen below.



Photo: Getty Images

THE CRIME REPORT YOUR CRIMINAL JUSTICE NETWORK

California Scraps Cash Bail to ‘Treat Rich and Poor Fairly’

By TCR Staff | August 29, 2018

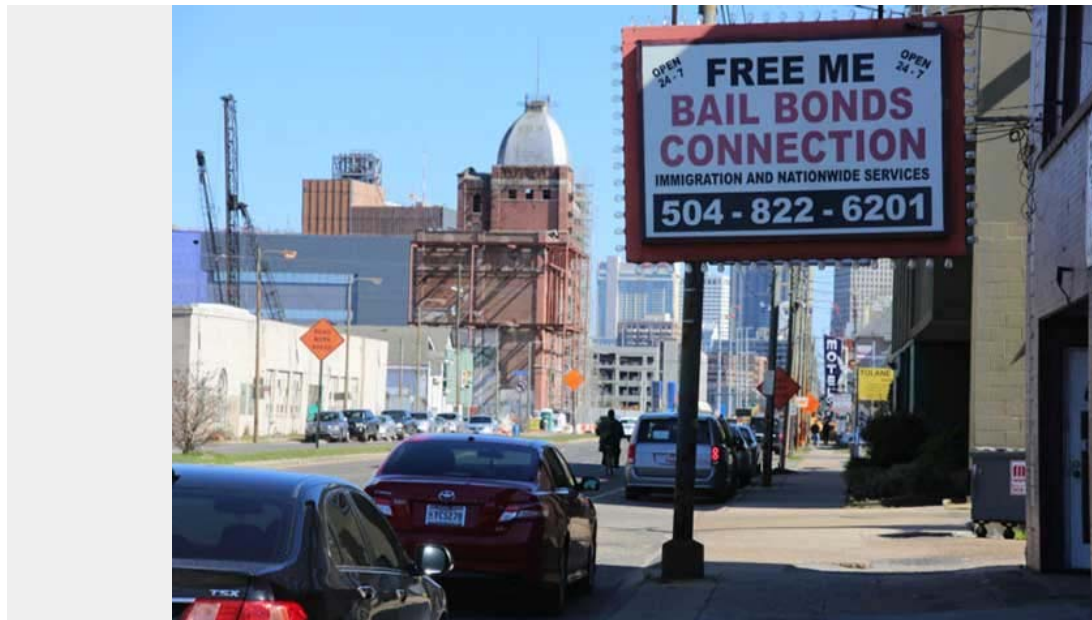


Photo by Paul Sableman via Flickr

California will become the first state to abolish money bail for suspects awaiting trial, under a sweeping reform bill signed by Gov. Jerry Brown, [reports NPR](#).

The measure, due to take effect in October 2019, means defendants will no longer be required to put up money or borrow it from a bail bond agent in order to secure release ahead of their trials. Instead, courts will use algorithms to decide who to keep in custody and who to release pending disposition of the case.

Gov. Brown, who has been pressing for bail reform for nearly four decades, said the California Money Bail Reform Act will ensure “that rich and poor alike are treated fairly.”

But many critics, including the American Civil Liberties Union (ACLU), said they were disappointed that the measure didn’t go far enough—and could further worsen racial bias and economic inequities in the courts.

“They took our rallying cry of ending money bail and used it against us to further threaten and criminalize and jail our loved ones,” Raj Jayadev, co-founder of advocacy organization Silicon Valley De-Bug, and a former supporter of the bill, [told the Sacramento Bee](#).

Under the Act, in most nonviolent misdemeanor cases, defendants would be released within 12 hours. Other defendants will be scored on how likely they are to show up for their court date, the seriousness of the crime, and the likelihood of recidivism.

The ACLU pulled its support, arguing that last-minute changes give judges too much discretion.

On the other side of the argument, the American Bail Coalition, which represents bail providers, likely will challenge the law in court.

Bail reform has gotten increased traction across the U.S.

Washington, D.C., already has a cashless bail system. Some states, including New Jersey, have passed laws that reduce their reliance on money bail. Other states are considering making similar changes.

At a meeting last spring, policies of prosecutors elected on progressive platforms around the U.S. were praised for showing promise to reduce the nation’s incarceration totals,

Jeremy Travis of the Laura and John Arnold Foundation [called “remarkable” and “stunning” a set of new policies](#) announced by newly installed Philadelphia District Attorney Larry Krasner.

Krasner [told his staff in March](#) to offer shorter prison sentences in plea deals, decline to file marijuana possession and many prostitution charges,

and explain case-by-case why taxpayers should pay thousands of dollars per year to incarcerate people.

Travis suggested that Krasner's practices reflected some of the findings of a [Misdemeanor Justice Project](#) at John Jay College of Criminal Justice, which he formerly headed. The project "seeks to understand the criminal justice response to lower-level offenses, from arrest to disposition."

At the federal level however, [bail reform still appears to be stalled](#).

Senator Bernie Sanders (I-VT) introduced legislation earlier this year that would end money bail on the federal level and incentivize states to do the same. The [No Money Bail Act](#) would prohibit the use of cash bail in federal criminal cases, provide grants to states that implement alternate pretrial practices, and withhold grant funding from states that continue to utilize cash bail.

"It has always been clear that we have separate criminal justice systems in this country for the poor and for the rich," reads Sanders's [summary of the bill](#). "A wealthy person charged with a serious crime may get an ankle monitor and told not to leave the country; a poor person charged with a misdemeanor may sit in a jail cell."

"And this disproportionately affects minorities—fifty percent of all pretrial detainees are Black or Latinx."

The No Money Bail Act is not the first push within Congress to tackle pretrial practices. Previous efforts, such as the measures introduced by Representative Ted Lieu (D-CA) in [2016](#) and [2017](#) and the [Pretrial Integrity and Safety Act](#) sponsored by Senators Kamala Harris (D-CA) and Rand Paul (R-KY) last year, have stalled, making it unlikely that Sanders's bill will receive the necessary traction to become law.

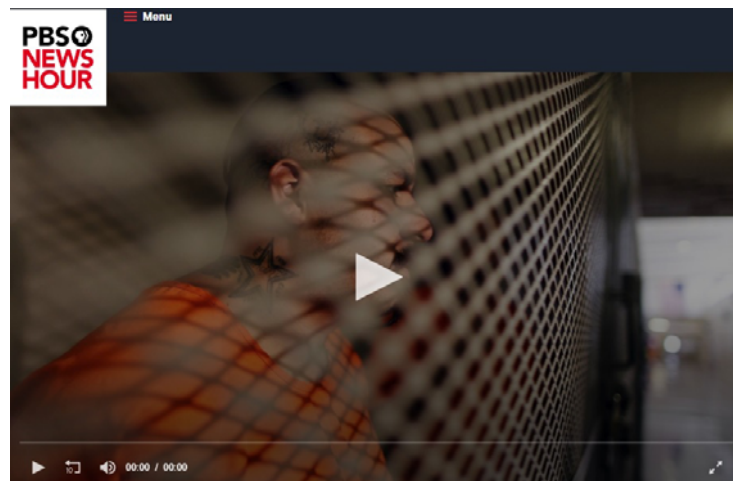
Even if Congress fails to act, bail reform is slowly gaining ground in cities and states around the U.S., partly through the work of advocates like Robin Steinberg.

Last November, Steinberg launched [The Bail Project](#), a five-year, \$52 million plan to bail out 160,000 people in more than 40 locations, starting with New York City.



California governor signs landmark bill to eliminate cash bail

Aug 28, 2018 6:40 PM EDT



Transcript

In California, Governor Jerry Brown signed a bill to eliminate cash bail for those awaiting trial. The new law grants broad discretion to judges to hold or release defendants. But some opponents, including the ACLU, fear that these changes will result in more people being detained before trial. Judy Woodruff interviews Marisa Lagos of public television station KQED, which has covered the story.

Judy Woodruff:

The state of California took a landmark step toward criminal justice reform today, as Governor Jerry Brown signed a bill that would eliminate cash bail for those awaiting trial.

Marisa Lagos of public television station KQED has been covering the story, and she joins me now.

Marisa Lagos, welcome.

So, just quickly, who was behind this effort? And what exactly would this new law do?

Marisa Lagos:

Well, this is a change that was backed by the governor, the chief justice of the court system here, and a majority of the legislature, as well as some criminal justice groups.

It would basically eliminate cash bail as of October 19 and replace it with a system that gives judges a lot more discretion. They would be guided by risk assessment tools that would decide whether someone's a low, medium or high risk for release.

But, ultimately, unless somebody was a misdemeanor defendant, in which case they would be automatically released, or very high-risk or facing a violent felony, the judges would really make that call.

And so it has been controversial. Some people think it's giving judges too much power.

Judy Woodruff:

So, again, this would apply to in all criminal accusation — criminal allegations?

Marisa Lagos:

That's right. I mean, this is a huge sea change.

We have seen some other changes and other states that doesn't go this far. But, basically, as of next fall, if you're arrested for a crime in California, cash bail will not be on the table. It will entirely be up to that court. And there could be, of course, conditions, say, an ankle monitor, probation oversight.

But the idea is that most low-risk and medium-risk defendants would get out and would be allowed to continue with their jobs and their families while they await trial.

Judy Woodruff:

So, tell us more, Marisa, about the opposition to it, and what that's based on.

Marisa Lagos:

Yes, so I mean, the bail industry has opposed this from the beginning, of course, for financial reasons.

But in the last few weeks, as this final compromise bill was revealed, the ACLU and some other groups who have really pushed for this reform said they are going to oppose

it. They think that this is going to actually result in more people being detained pretrial, and they have concerns about biases that exists within the court system.

For example, a judge may look at an African-American defendant differently than a white defendant, based on their own biases, maybe some that they're aware of, or that these risk assessment tools, which use algorithms to look at somebody's criminal history, their job history, what they're facing this time, that those could have problems.

And so we did see the ACLU come off of this bill. Interestingly, law enforcement, which had opposed earlier versions, is neutral. And so that is sort of a flip of who the opponents are, although I think it's important to say that there are still some criminal justice groups that pushed this that remain in support.

Judy Woodruff:

So, just quickly, Marisa, going forward, California often leads the country in legal measures and steps that it's taking, but is this expected to be challenged in the courts?

Marisa Lagos:

It is.

I talked to the American Bail Coalition today. They believe that this requires a change to the state constitution, and that it can't be done legislatively, the way it was. And — but, as you said, this is very sweeping. It goes further than any other state has gone. And so I think we would expect any change like that to end up being challenged.

Judy Woodruff:

Marisa Lagos of KQED public television, thank you very much.

Marisa Lagos:

Thanks, Judy.

Desert Sun.

PART OF THE USA TODAY NETWORK

California just eliminated money bail. Here are ten things you should know

[Samuel Metz](#), Palm Springs Desert Sun

Published 12:26 p.m. PT Aug. 29, 2018 | Updated 4:29 p.m. PT Aug. 29, 2018



(Photo: Kathy Willens, AP)

On Tuesday, Governor Jerry Brown signed the [California Money Bail Act](#) into law, drastically changing how California courts jail those accused of crimes in the days and months leading up to their trials.

"Today, California reforms its bail system so that rich and poor alike are treated fairly," Brown said on Tuesday after signing the bill, which will enter into effect in October 2019.

Here are ten things to know about the new law:



Gov. Brown Press Office ✓

@GovPressOffice



@JerryBrownGov Signs Legislation to Revamp California's Bail System, Protect Public Safety: bit.ly/2N2YWvI #SB10

12:29 PM - Aug 28, 2018

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State Sen. Bob Hertzberg, D-Los Angeles, led the effort

Hertzberg spent two years working to pass Senate Bill 10 and reform California's bail system. "Our path to a more just criminal justice system is not complete, but today it made a transformational shift away from valuing private wealth and toward protecting public safety," Hertzberg said in a statement.

The change came after a study

The legislature's push to reform how California holds defendants in jail before they are tried in court follows a 2017 [review](#) of the state's bail system ordered by California Supreme Court Chief Justice Tani G. Cantil-Sakauye. The review concluded that California's money bail system "unnecessarily compromises victim and public safety because it bases a person's liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias."



State Sen. Bob Hertzberg, D-Van Nuys, right and Assemblyman Rob Bonta, D-Alameda, left, celebrate Thursday during a news conference on the bill they co-authored to end money bail, after the Assembly Appropriations Committee advanced the bill, which will now be considered by the full Assembly. (Photo: AP PHOTO)

Under the current system, people accused of crimes can post cash sum or pay a bail bondsman to be released before their trial

Courts hold bail as collateral, to ensure defendants appear at their trial. Defendants can either pay the court cash or use a bondsman to post the amount. Bail bondsmen typically charge fees of 10 percent of bail amounts, which vary across California's 58 counties. [Here](#) is Riverside County's bail schedule.

California will be the first state to abolish money-based bail

Washington D.C. transitioned to a mostly cashless bail system in 1992 and other states, including New Jersey, Alaska, and New Mexico, have reformed their bail systems, but no state has eliminated the bail industry entirely.

Under the new system, judges will have additional power to hold people pre-trial

California will replace its money-based bail system with a risk-assessment system judges will use to determine whether defendants pose flight risks that merit holding them in jail before their trial. The new law will require the courts to release people accused of misdemeanors within 24 hours.



Assemblyman Rob Bonta, D-Alameda, and Sen. Bob Hertzberg, D-Los Angeles, are authors of legislation to eliminate money bail in California. (Photo: Laurel Rosenhall/CALmatters)

Progressive groups oppose the system that will replace money bail

The original bill was co-sponsored by American Civil Liberties Union, but the group pulled its support days before the vote to protest amendments. The A.C.L.U. and other progressive groups historically in favor of criminal justice reform believe the risk assessment system, which will give judges additional power to hold defendants before they are tried, perpetuates existing prejudices and could lead to more people being jailed.

The new risk-based assessment program is estimated to cost \$200 million

Most of the expenses will go toward the creation of a system to evaluate whether defendants can be released pre-trial.

Nationwide, the bail industry earns \$14 billion annually

In California, there are more than 3,000 licensed bail agents working throughout the state.



Indio officials have imposed a 45-day ban on new bail bond services near the courthouse. Eduardo Figueroa, pictured in this file photo, is manager for Bail Hotline Bonds and feels the ban is not fair. (Photo: Omar Ornelas/The Desert Sun)

The bail industry intends to fight the law

Jeff Clayton, the president of the American Bail Coalition, said the industry plans on challenging the law's constitutionality. "I don't think the Legislature can expand preventative detention without changing the constitution," he told a Northern California radio station.

Republicans and Democrats running for state office are divided on the issue

Democratic candidates for Governor Gavin Newsom praised the new law, while Republican gubernatorial candidate John Cox and Atty. General candidate Steven Bailey denounced it.

San Mateo County preparing for end of money bail system

Criminal justice officials scope state's landmark bill

By Anna Schuessler Daily Journal staff Sep 7, 2018 Updated Sep 7, 2018

By signing a state bill aimed at reforming California's cash bail system last week, Gov. Jerry Brown may have shifted criminal courts across the state away from a system allowing defendants such as suspected murderer and Hillsborough woman Tiffany Li to post \$35 million bail while others charged with far less serious crimes await their trials from county jail.

But for county criminal justice officials tasked with implementing a new set of standards for assessing whether someone should be held in custody, the jury is still out on how the shift will affect those charged with crimes in San Mateo County.

Alleging the state's current bail system punishes low-income individuals by forcing them to choose between staying in custody, paying a bail bonds agent or pleading guilty to be able to return to their homes, state Sen. Robert Hertzberg, D-Van Nuys, and Assemblyman Rob Bonta, D-Oakland, have for the past two years been shaping a bill allowing defendants to be held in custody only if they pose a significant risk to public safety or of failing to appear in court.

Set to take effect in October of 2019, Senate Bill 10 marks a transformational step in correcting fundamental injustice by abolishing money bail and replacing it with a risk-based system, said Bonta, who authored mirror legislation in the state Assembly.

“For too long, our system has allowed the wealthy to purchase their freedom regardless of their risk, while the poor who pose no danger languish in jail,” he said in an Aug. 28 press release after the governor signed SB 10. “No more. Freedom and liberty should never be pay to play.”

Introduced by Hertzberg in December of 2016, the bill was contested by both the American Civil Liberties Union and the American Bail Coalition by the time it passed both houses. Though they supported previous versions of the bill, it drew criticism from American Civil Liberties Union chapters across the state for not promising a substantial reduction in pretrial detention and not sufficiently addressing racial bias in pretrial decision making, according to a press release.

The American Bail Coalition argued the bill not only upends the state’s bail system, but also threatens an individual’s right to bail under the California Constitution. The group announced support of a petition to reverse SB 10 shortly after the governor signed the bill, according to a press release.

Defense perspective

For defense attorney Lisa Maguire, who is also assistant chief defender for the county’s private defender program, the transition away from keeping those who can’t afford to post bail in custody is a good one.

“We certainly don’t want to ever think that somebody is going to be incarcerated because they’re unable to come up with money,” she said. “Of course, that is of concern, so we’re glad to see them get rid of the financial component of the evaluation.”

Knowing well there are many charged with low-level crimes who have remained in custody after their arrests because they can’t afford to post a \$5,000 bail bond, Maguire expected the changes to benefit those who have been disadvantaged by the current bail system. While the bail alone can be insurmountable for some, Maguire added those who are able to

post bail often rely on the assistance of a family member or friend who is able to work with a bail bonds company to enter into a contract and pay the required fees.

But she acknowledged how exactly it would affect the broad base of clients county defense attorneys serve is difficult to predict at this stage, as county criminal justice officials await word from the state's Judicial Council, the policy and rule-making body of the California court system, on how an individual's risk can be assessed under the new system.

Though she is hopeful clients will fare better under the system to replace bail, Maguire said she has heard of concerns it will give judges too much discretion when it comes to determining whether someone is released or stays in custody as they await trial. Those deemed to be of medium or high risk to the general public or to fail to appear in court are set to go under review by the agency providing pretrial assessment services per the new system, which will ultimately determine whether they are released or detained in custody as their cases are adjudicated, according to the bill's text.

Because there may be individuals charged with medium- or high-level crimes who could have posted bail under the current bail system, Maguire could foresee some of those facing more serious charges may feel disadvantaged by the changes to take shape next year, which wouldn't afford them the option to post bail if a judge determines they should be kept in custody.

"I would say there's definitely a concern that it's not going to be the outcome that people had envisioned," she said.

Change in support, opposition

Having harbored concerns about earlier versions of the bill relying heavily on a risk assessment tool to determine whether an individual is released, District Attorney Steve Wagstaffe favored recent amendments to the bill affording judges more discretion to make a determination on one's custody status. He said the changes augmenting a judge's discretion as compared to previous versions of the bill were behind the California District Attorneys Association's decision to move its position from opposed to neutral on the bill in the weeks leading up to the state Legislature's vote.

“I still believe that one of the key components of a good criminal justice system is faith that judges do the right thing,” he said.

San Francisco Public Defender Jeff Adachi was among those who supported a previous version of the bill but were later dismayed by the revised version passed by legislators last week. Adachi called more recent amendments to the bill shocking, noting they situate the power to detain a person close to judges instead of using a risk assessment tool and following very strict procedures before a decision is made to keep someone in custody.

“When we began working on bail reform, the basic principle was to create a rational process by which people were released and to eliminate racial bias and human error,” he said. “We see that this new law will give too much power to judges and our fear is that more people will be held in custody.”

New system

Wagstaffe said one of the biggest changes county prosecutors will have to contend with under the new system is preparing for hearings in which they will assemble a body of evidence proving why they believe an individual should remain behind bars as they await their court proceedings. He said the hearings are set to take place within days of someone’s arrest, and the burden will be on prosecutors to prove preventative detention is appropriate for those charged with more serious crimes.

“We have a whole new set of hearings that we have to conduct,” he said. “It takes substantial evidence to show that they would be danger to the community.”

Maguire also acknowledged the timeframe set for the new hearings is fairly short, allowing defense attorneys and prosecutors only three days in most situations to make a case about an individual’s background. She noted the challenges defense attorneys face in getting information about a defendant’s case the day they are arrested, and said defense attorneys will be thinking about ways to expedite information gathering so they can present a comprehensive picture of an individual within the required timeframe.

Though she acknowledged there may be cases in which a defense attorney can request their client's detention status be brought before a judge again should someone's circumstances change, Maguire noted that for the most part, those facing more serious charges now only have one opportunity to make their case to be released since bail is no longer an option.

"People always had bail," she said, referring to the current bail system. "If nothing else, they could post the bail. ... With the new law, if you're unsuccessful, that person has no other way to get out of custody ... I think the stakes have gone a lot higher in terms of the outcome of the hearing."

To be able to implement the new system, Chief Probation Officer John Keene said he will need to hire additional staff to have probation officers available 24 hours a day to ensure individuals are assessed within the timeframe required by the law. Because the department he oversees currently provides the county's pretrial services, Keene said eight to 10 full-time probation officers are able to carry out the department's adult pretrial services currently. How many more staff members he will need to hire may become clearer in January when state officials are expected to make information on approved risk assessment tools and the state funding to be dedicated to these changes, he said.

Because San Mateo County criminal justice officials already work collaboratively, Keene expected the county to be well-positioned to make the shift to a new pretrial system in the coming months. He looked to the changes to be a step toward ensuring an individual's finances are not the primary factor considered in their custody status, and was pleased the bill would not pass the costs of any nonmonetary conditions, such as electronic monitoring devices, onto the accused. He also expressed gratitude the system would not take effect until next year, which gives county officials time to explore what types of non-monetary measures, which could also include reporting to a probation officer daily, may be used in the county.

"This is an incredibly historical sea change for our system," he said. "There's a lot of work in the next several months."

Keene noted the combination of static and dynamic factors to be considered as factors in the new system's risk assessments are likely to

provide a more accurate review of a person's risk. While the number of convictions or times someone has previously appeared in court provide one side of the story, Keene said asking individuals whether they have family ties in the community or their thoughts on an alleged crime can provide more information on a person's attitude and personality.

"That gives you a real sense in terms of an individual's mindset, which really is more indicative of a person's risk," he said.

Keene said it's too early to tell what impact the changes will have on the number of people held in custody, but he is hoping the changes don't negatively affect county jails across the state. Wagstaffe estimated that only some 30 percent of those in county jail cells have been convicted and sentenced for crimes, and that others are awaiting further court proceedings.

Clear impact

While most of the major actors in the county's criminal justice system say the effects of the new law remain to be seen, for former bail bondswoman Corrin Rankin, the law's impact on the bail bonds industry has been clear for some time. With concerns about the burden the changes will have on individuals charged with crimes as well as people who have devoted their lives to the bail bonds industry, Rankin said she has testified before the state Senate's public safety committee and attempted to meet with legislators to shape the bill.

But she said the voices of bail bonds agents have consistently been left out of the conversation, and the bill's impending success is partly behind her decision last year to close Out Now Bail Bonds, a business she owned in Redwood City since 2008.

Rankin said news of the bill's passage hit the bail bonds community hard, with several of her friends lodging concerns about their financial prospects now that they will be required to wind down their business. She feels the bail bonds industry has been portrayed negatively as a business that benefits financially from the misfortunes of others as SB 10 took shape in the last two years, a perception she said must change if bail bonds agents are to move forward from the disruption of their businesses, which she noted has provided Californians the opportunity to exercise their right to post bail for decades.

“There has to be an opportunity for us to move on with our lives somehow, but if this negative perception still exists, we’re never going to be able to pick ourselves up out of the devastation that the government has caused us,” she said. “How are we going to overcome it? What’s the remedy for us?”

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THE CRIME REPORT **YOUR CRIMINAL JUSTICE NETWORK**

Could New CA Bail Law Doom \$2 Billion National Industry?

By Crime and Justice News | September 10, 2018

California bail agents are working to process a new law signed by Gov. Jerry Brown that could decimate their industry. The new system, which would virtually eliminate payment of money as a condition of release, could spell doom not only for bail agents, bounty hunters and surety companies across the state, but also a \$2-billion bail industry nationwide, the Los Angeles Times reports. Reform in California, which holds about a quarter of the market, could prompt other states to take similar action, bail groups and lobbyists said. A day after Brown signed the bill, bail associations filed a voter referendum in an attempt to block it, asking for support from the very criminal justice groups and activists they've long been at odds with.

Some agents are scrambling to find new careers, closing up shop or weighing whether to move their businesses out of state. In Los Angeles County, home to the nation's largest jail system, Lipstick Bail Bonds co-owner Teresa Golt expects to see storefronts shutter up and down bail row. The new law grants greater power to courts and probation departments to decide who should remain incarcerated ahead of trial. Under the new system, many people will be let go solely on a promise to return to court,

while others could be placed on monitoring devices or remain incarcerated without any possibility of release under a practice known as “preventive detention.” The American Bail Coalition has three months to gather 366,000 signatures needed to qualify the referendum for the November 2020 ballot. Some in the business warned that as bail companies and sureties attempt to stay afloat, some agents could write more bonds and aggressively collect on debts in a final push for profits before industry extinction.

Los Angeles Times

POLITICS

California has ended money bail. Who will bail out the industry?

By JAZMINE ULLOA SEP 09, 2018 | 12:05 AM | SACRAMENTO



The landmark legislation that Gov. Jerry Brown has signed to overhaul the state's bail system will take effect in October 2019. (Gary Coronado / Los Angeles Times)

Under the glare of neon signs and unforgiving fluorescent office lights, bail agents are spending time processing a new California law signed just days ago by Gov. Jerry Brown that could decimate their industry.

The new system, which would virtually eliminate the payment of money as a condition of release, could spell doom for not only bail agents, bounty hunters

and surety companies across the state, but also a \$2-billion bail industry nationwide. Reform in California, which holds roughly a quarter of the market, could prompt other states to follow suit, bail groups and lobbyists said.

Reaction has been swift: Just a day after Brown signed the bill into law, bail associations filed a voter referendum in an attempt to block it, asking for support from the very criminal justice groups and activists they've long been at odds with. Now agents say they are scrambling to find new careers, closing up shop or weighing whether to move their businesses out of state.

In Los Angeles County, home to the largest jail system in the country, Lipstick Bail Bonds co-owner Teresa Golt said she expects to see storefronts shutter up and down bail row.

"We are done. We are 100% done," said Golt, who runs the business with her sister, Lisa Golt. "There is no such thing as California bail agents anymore." After 19 years in business together, the sisters plan to write bonds until the law takes effect — in October 2019, should the referendum effort fail. Then they would shut down four offices in Southern California, repaint a fleet of 29 vehicles and start a new business in private security.

In Sacramento, Kellie Weatherby of Atlantis Bail Bonds considered whether to move on from an industry she has been a part of for 30 years.

"I don't know. I just don't know," said Weatherby, whose father, Kenneth J. Weatherby, was also a bail agent. "It's upsetting. We are concerned as a business, we are concerned as citizens."

The landmark new law, brokered between state lawmakers, the governor and California's top judge, grants greater power to courts and probation departments to decide who should remain incarcerated ahead of trial. Under the new system, many people will be let go solely on a promise to return to court, while others could be placed on monitoring devices or remain incarcerated without any possibility of release under a practice known as "preventive detention."

The American Bail Coalition, along with bail lobbying and crime victims groups, have roughly three months to submit to the state the estimated 366,000 signatures needed to qualify the referendum for the November 2020 ballot. Organizers say they are confident in their chances to put the measure before voters, stalling implementation of the law until that time.



Teresa Golt, left, holding her "pink lipstick shotgun," and her sister Lisa Golt say a new law will destroy the bail bond industry. (Mel Melcon / Los Angeles Times)



Ismael Vedoy, bail agent at Bad Boys Bail Bonds, waits to post a bond for a client at the Los Angeles County Jail. (Gary Coronado / Los Angeles Times)

“This is Step 1,” said Jeffrey Clayton, a spokesman for the effort and director of the American Bail Coalition. “Step 2 is all the various legal challenges that are going to get filed if this is going to become law.”

Some in the business warned of possible consequences of the new bail system that would be unfavorable to defendants. As bail companies and sureties attempt to stay afloat, they said, some agents could write more bonds and aggressively collect on debts in a final push for profits before industry extinction.

“Trust and believe [bail agents] are going to attack people’s livelihood and credit,” said Miles Soto, a former bail consultant and private investigator in Southern California. “Because if bail goes away, the one thing that will still be here a little longer is [debt] recovery, because surety companies will need to clear all of their liabilities.”

Under the current system, judges must factor in a defendant’s ability to pay as they set bail according to lists of criminal offenses and their fixed fees. If a defendant is unable to post the amount in advance, a nonrefundable fee — typically 10% or less of that amount — can be paid to a bail company to front the money.

Money bail provides an incentive for people to come back to court, and bail bond companies help ensure they do at no cost to taxpayers, members of the industry argue. Bail agents and bounty hunters remind defendants of court appearances, find offenders who attempt to jump bail and develop relationships with clients who cycle in and out of jail, devoting time and resources that courts and probation offices are unlikely to have, they said.

“We answer our phones at 3, 4, 5 in the morning,” Golt said. “What government employee is going to do that?”



Reality TV personality Duane "Dog the Bounty Hunter" Chapman urges California lawmakers to reject a measure to change the state's bail system during an Assembly hearing in 2017. (Rich Pedroncelli / Associated Press)

Jeff Stanley, who owns Bad Boys Bail Bonds, which has offices in Los Angeles and across the state, said bail agents perform a range of services, including spending time counseling defendants' families.

"We know all the aspects of their lives," he said. "Bail bond agents are in the trenches with them."

For some, the business is personal. Some minority bail company owners said they set up their businesses because they felt the needs of black and Latino defendants were not being served.

Weatherby said she was motivated to open her own business after watching her father take calls from clients at all hours. He wouldn't just bail them out, she said, he would also explain court records, bank accounts and utility bills.

"He would say, 'You have to help people out sometimes,' " she recalled, adding that she does the same for her clients and knows other agents who do as well. "There are some quality people in this business."

But by the time California lawmakers launched their effort to transform the state's bail system in late 2016, the commercial bail bond industry had expanded beyond the small businesses and bargain storefronts near downtown jails and disadvantaged neighborhoods.

A 2017 study by the American Civil Liberties Union and Color of Change, a left-leaning civil rights group, found that 10 global insurance companies underwrote nearly all of \$14 billion in bail bonds issued nationwide. Another report by the UCLA School of Law analyzed more than 100 bail contracts tied to large sureties and found that the fine print often gave agents broad discretion to return defendants to jail or weigh them down with hidden fees and gave the sureties control over the life savings, homes and vehicles families offered as collateral.

In California, the rise in complaints about the bail industry was so significant that some bail and recovery agents avored changing the system, calling for better licensing, training and oversight.

Among those who faced complaints are the Golts, who were sued in 2013 by a man who said he was injured when they tried to detain him with pepper spray and a stun gun. The Golts said the claims were false, and a judge dismissed the lawsuit. The man who accused them is now in prison for killing his uncle.

"I always tell people the bail business is disgusting and wonderful," Soto said. "Some bail agents are of the worst caliber. But when used correctly, bail can be used to help people in a wonderful way."



Gov. Jerry Brown, right, talks with state Sen. Bob Hertzberg (D-Van Nuys), left, and Assemblyman Rob Bonta (D-Alameda) in Sacramento before he signed their bill to end bail. (Rich Pedroncelli / Associated Press)

Sen. Bob Hertzberg (D-Van Nuys) and Assemblyman Rob Bonta (D-Alameda) authored the new law as part of an ambitious effort to overhaul a system they said punished the poor.

At the time the bill was introduced, the median bail amount in California was \$50,000, five times higher than the median amount nationwide. Other states, including New Jersey and Maryland, had also scaled back their use of the practice. Debate over the issue raged in courts, with cities and counties across the country facing lawsuits over policies that some legal experts said turned jails into modern-day debtors' prisons.

The legislation's passage should have been a victory for criminal justice reform advocates who for years sought to eliminate money bail. But some early backers, including the ACLU of Northern California, dropped their support amid concerns that the final version of the bill would allow judges to incarcerate more people for longer periods of time. They said it also did not include enough oversight over risk assessment tools, technological analyses that rely on computer algorithms to predict a person's likelihood to break the

law again, which studies have found can exhibit bias against communities of color.

Bail agents say they have received calls from defense lawyers and civil rights groups, including at least two groups in Los Angeles, who have shown an interest in joining the effort to oppose the new law.

“I think eventually it will be a lot more than just the bail industry,” Clayton said of the voter referendum.

The ACLU on Friday declined to comment on whether it would join the industry’s efforts. Civil rights groups are waiting on the state Supreme Court to review a ruling on a judge’s authority to set bail.

John Raphling, a senior researcher with the nonprofit Human Rights Watch, said he thought it was unlikely that activists who helped push the overhaul and are now unhappy with the result would end up working with bail agents.

“I would have to see what they are putting out there,” he said of the bail industry referendum. “We would have to see if there is something that would reduce inequities, but also reduce incarceration. If it did those things, then we would have to give it a good, hard look.”



Jazmine Ulloa

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Opponents Start Process to Overturn Law Eliminating Money Bail System

Published at 2:01 AM PDT on Aug 30, 2018 | Updated at 7:36 AM PDT on Aug 30, 2018



California Gov. Jerry Brown signed a bill that will put an end to the money bail system. Under the new law, defendants who do not impose a flight risk, or threat to the public, will be freed to await trial. Supporters say it levels the playing field between rich and poor. (Published Thursday, Aug. 30, 2018)

Opponents of the recently signed bill to overhaul the state's monetary bail system Wednesday began the process to qualify a referendum for the ballot to overturn it by filing documents with the Office of the Attorney General.

"This misguided legislation is opposed by scores of various interest groups on all sides of the aisle," said Jeff Clayton, executive director and policy director of the American Bail Coalition, a trade association of national bail insurance companies.

"When this legislation was hijacked at the eleventh hour, we knew that we would not let this stand. We are building a substantial wall that will hopefully prevent this reckless legislation from ever becoming law."

Gov. Jerry Brown signed SB 10 into law on Tuesday, saying "today, California reforms its bail system so that rich and poor alike are treated fairly."

Under SB 10, people arrested on suspicion of criminal offenses can be held in jail only if they pose a significant risk to public safety or risk missing their court date, according to Sen. Robert Hertzberg, D-Van Nuys, one of the bill's co-authors.

Instead of setting money bail amounts, the legislation allows for non-monetary release conditions for eligible defendants, such as GPS monitoring or home detention with electronic monitoring.

The bill gives judges discretion to determine which defendants pose a safety risk to the public or might potentially fail to appear in court and should remain jailed.

"Our industry has been a significant part of this grand experiment called the United States of America for most of its history," said William Carmichael, chairman of the American Bail Coalition.

"We are not going to allow it to go away, especially at the expense of the trammeling of constitutional rights and the dehumanization of all of those who will be processed by the new justice-by-algorithm system."

Backers of the bill say that quantitative data would play only one part in assessing the danger posed by any individual defendant because judges would have access to other information.

The bill requires local courts to set up systems to identify individuals who are a risk to public safety or at risk of missing their court date, but allows jurisdictions to dictate the specifics, rather than taking a one-size-fits-all approach.

The result would be that a "vast majority" of people would be released from jail within 12-24 hours of their arrest, according to the bill's sponsors.

Under state law, valid signatures from 365,880 registered voters -- 5 percent of the total votes cast for governor in the 2014 general election -- must be submitted for the referendum to qualify for the ballot.

The Bakersfield Californian

News

Bail bonds industry facing obsolescence under law eliminating cash bail

BY JASON KOTOWSKI jkotowski@bakersfield.com Sep 2, 2018



Bad Dog Bail Bonds, one of many bail bonds companies in Bakersfield.
Felix Adamo / The Californian

Many questions remain unanswered about a new bill signed this week that eliminates cash bail in California and instead replaces it with a "pretrial risk assessment" in which a local agency will determine the risk level of those charged with a crime; report their results to the court; and make recommendations for conditions of release.

But one thing is pretty clear. The new law would decimate the bail bonds industry.

"It does away with a whole industry that's been around probably 150 years and didn't cost the taxpayers one dime," said Steve Epps, owner of Cowboy Bail Bonds in Bakersfield. "No system is perfect, and bail for God's sakes is not a perfect system. But I can't see doing away with it and starting a whole new system."

The bill's supporters say it provides a more equitable system for those who can't afford bail and ended up staying in jail solely due to insufficient funds.

But detractors say amendments to the bill could result in more people spending time behind bars than under the previous system.

And those detractors are gearing up for a fight. Leading the charge are bail bondsmen, whose industry in California will be wiped out if the law stands.

The American Bail Coalition has announced its support of a ballot initiative it hopes will prevent the bill from becoming law. If enough signatures are gathered, voters will be able to weigh in on the measure in the 2020 general election.

"Our industry has been a significant part of this grand experiment called the United States of America for most of its history," William Carmichael, chairman of the American Bail Coalition, said on its website. "We are not going to allow it to go away, especially at the expense of the trammeling of constitutional rights and the dehumanization of all of those who will be processed by the new justice-by-algorithm system."

The way the current system works, those in custody usually need to pay a bail bondsman a nonrefundable fee of 7 percent to 10 percent of the bail price in order for the bondsman to post bail. Failure to turn up in court will result in the bondsman rescinding the bail amount.

Epps estimates the new system could cost the state as much as \$2 billion to implement. And he said there will be "mass incarceration" because those who previously could have posted bond and been released will instead be stuck inside a cell.

The law takes effect Oct. 1, 2019.

There are a lot of family-owned bail bonds businesses that have been passed down for generations that will go belly up under the new system, Epps said. Cowboy Bail Bonds, for example, was started by Epps' father in 1969 then passed on to him.

T.J. Esposito of Patriot Bail Bonds in Bakersfield said the legislation "is just bad policy."

For one thing, he said, it's going to require more court appearances and more time from attorneys and judges. Then there's the issue of people being released who will fail to show for their court hearing.

Esposito said two-thirds of people released on their own recognizance fail to appear in court while only 4 percent of defendants nationwide fail to show because they know the bondsman will rescind the bail amount, he said. There's more incentive to appear.

And on the other end of the spectrum, he said, are those who previously could have made bail who will now be stuck in custody because they're deemed too much of a risk.

Esposito said Senate Bill 10 is "bad on every level" and replaces a system that's not perfect but works.

"Bail bondsmen are like honeybees," he said. "They're scary when they fly by, they sting, but nothing works without them."

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San Francisco Chronicle

LOCAL // NEWS

Bail bond companies gathering signatures for referendum to keep them in business



Bob Egelko | Sep. 11, 2018 | Updated: Sep. 11, 2018 6:10 p.m.



Bail bond offices, like these in San Francisco on Wednesday, Aug. 29, 2018, became at risk of closure after California eliminated bail under a law signed by Gov. Jerry Brown on Aug. 28, 2018. The law is scheduled to take effect in October 2019, but bail bonds companies are seeking to block its enactment through the ballot box.

Photo: Liz Hafalia / The Chronicle

Bail bond companies have started gathering signatures for a referendum to block a new California law, the first of its kind in the nation, that would eliminate cash bail as a requirement for pretrial release from jail.

State election officials authorized a trade association, the American Bail Coalition, to circulate petitions Monday to place the referendum on the November 2020 ballot. If the association collects 365,880 valid signatures of registered voters by Nov. 26, the law will be put on hold until the voters decide whether to repeal it. Otherwise, the law, SB10, would take effect in October 2019.

The measure, signed by Gov. Jerry Brown on Aug. 28, would abolish the system of requiring defendants to post bail, in amounts based on the level of the crime and a defendant's record, in order to be freed while awaiting trial. At least one-third of jail inmates in California are being held because they are unable to post bail, and the system has been criticized for keeping poor defendants locked up while richer ones go free.

Instead, judges would decide whether to release defendants after an assessment of the danger they pose to the public and the likelihood they would return to court for trial. The assessments would use formulas based on the charges and circumstances of each case, but individual judges would have the last word.

The new law would also eliminate the bail bond industry in California, whose chief source of income is the non-refundable 10 percent fee that companies charge to defendants for posting bail.

While the bond companies are sponsoring the referendum, they're looking for support from other opponents of SB10 who contend the new law would swap one system of pretrial confinement for another. Some criminal defense groups that supported early versions of the bill have said the final version, which increased judges' authority over pretrial release, would increase confinement over current levels.

"The opposition was from both the left and the right," Jeffrey Flint, spokesman for the referendum campaign, said Tuesday. "We anticipate and hope that the entire group of folks who opposed SB10 at the end of the session will support its repeal through the referendum process."

Flint declined to discuss the budget for the referendum campaign but said sponsors are confident they have the funds to be able to get the measure to qualify for the ballot.

San Francisco Public Defender Jeff Adachi, who supported lawmakers' earlier proposals to abolish cash bail but opposed the final version of SB10, said he would rather work with lawmakers to amend the law, reducing "the unbridled power that the judiciary has," than support a referendum to repeal the law.

“Do we tear it up and start again or can the Legislature make changes that would comport with fairness and due process?” Adachi said. “I will be urging the latter.”

Bob Egelko is a San Francisco Chronicle staff writer.

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THE SACRAMENTO BEE



Greg Padilla and Tony "The Tiger" Lopez are among many bail bondsmen in Sacramento who are against SB 10, a new law that will eliminate California's bail bonds industry in October 2019.

By Michelle Inez Simon | Randall Benton



Capitol Alert

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CAPITOL ALERT

Sign here, bail bondsmen say + Brown works climate change deals

BY BRYAN ANDERSON
banderson@sacbee.com

September 13, 2018 05:45 AM

SCURRYING FOR SIGNATURES

With Gov. [Jerry Brown's signature](#) last month, California overhauled money bail. The bail bond industry [immediately responded](#), vowing to introduce a referendum asking voters to delay — and ultimately overturn — Senate Bill 10.

Jeff Flint, campaign manager for the bail referendum, said the campaign to gather enough signatures over the next 90 days is in full swing. He said it took less than 48 hours for the **American Bail Coalition** to provide enough money to get the process going and estimates the total cost of signature gathering will be in the “low millions.”

“We have half the normal time (to collect signatures), but we’re going to make a full effort to get this qualified,” Flint said. “We believe we have the resources.”

Despite the shorter period of time, Flint said he is confident the referendum can gain enough support, given that the group is not competing with other measures.

If the referendum’s backers can gather 365,880 signatures from registered voters by Nov. 26, they will delay the implementation of the money bail overhaul until voters weigh in, likely in 2020.

“It will be a very substantive effort with both paid and volunteer petition gatherers,” Flint said, declining to add how much gatherers would be paid per signature.

The coalition will soon make financial disclosures available through the [Secretary of State's website](#).

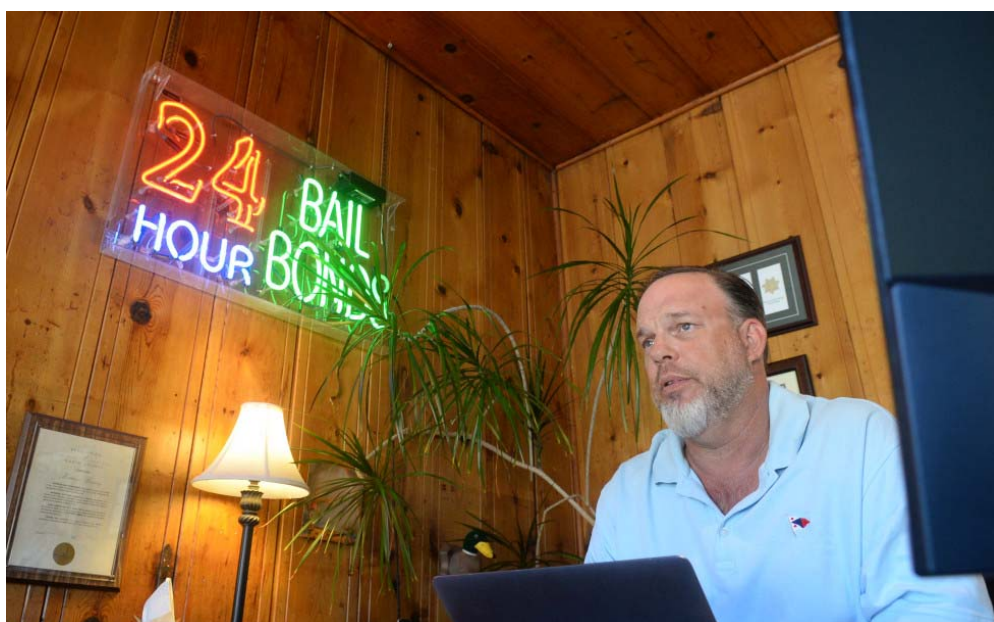
Marin Independent Journal

marinij.com

Marin bond agents fight legislation ending cash bail

Adrian Rodriguez

PUBLISHED: September 16, 2018 at 11:15 am | UPDATED: September 17, 2018 at 5:40 am



Matt Ramsey, owner of the Marin Bail Bonds, sits at his desk in San Rafael on Thursday. (Alan Dep/Marin Independent Journal)

For 25 years, Matt Ramsey has worked with people in crisis at their most dire hour of need.

“Often they’re going through something traumatic,” said Ramsey, owner of Marin Bail Bonds at 48 N. San Pedro Road in San Rafael, near the Marin County Jail. “My ability to treat them with dignity and kindness is very much part of what I do.”



Marin bond agents oppose SB 10, a new law that will eliminate cash bail in California. (Alan Dep/Marin Independent Journal)

Ramsey says all of that will be lost with the introduction of sweeping legislation, signed last month by Gov. Jerry Brown, that would eliminate cash bail in California. But there is hope, Ramsey says, as Senate Bill 10, which would take effect in October 2019, has formed a strange alliance between bail bonds firms and activists who want to eliminate their industry.

Ramsey, a self-described family man who lives in Greenbrae, has two daughters and has been married to his wife Heather — whom he runs his business with — for 23 years. He is among Marin bond agents who are joining the American Bail Coalition in gathering signatures for a referendum to block the law.

Starting this week, Ramsey will have petitions at his office hoping to contribute enough signatures to place the referendum on the November 2020 ballot. The association needs to collect 365,880 valid signatures from registered voters by Nov. 26 in order to freeze the law until voters at the ballot box can decide whether to repeal it.

“This is very much a family business,” Ramsey said. “The concept of having our industry be completely eliminated is daunting.”

Under SB 10, California will replace bail with “risk assessments” of individuals and nonmonetary conditions of release. Counties will establish local agencies to evaluate any suspect arrested on felony charges for their likelihood of returning for court hearings and their chances of re-arrest.

A person whose risk to public safety and risk of failure to appear is determined to be “low” would be released with the least restrictive nonmonetary conditions possible, according to SB 10. “Medium-risk” suspects could be released or held depending on local standards. “High-risk” suspects would remain in custody until their arraignment, as would anyone who has committed certain sex crimes or violent felonies; is arrested for driving under the influence for the third time in less than 10 years; is already under supervision by the courts; or has violated any conditions of pretrial release in the previous five years.

The law’s supporters — including co-authors Assemblyman Rob Bonta, D-Alameda, and state Sen. Robert Hertzberg, D-Van Nuys, and state Chief Justice Tani Cantil-Sakauye — all called the signing a transformative moment toward a more fair criminal-justice system in California.

Advocates of abolishing bail contend that too many defendants remain stuck in custody because they cannot afford to bail out, effectively creating unequal justice based on wealth. California is at the forefront of a national campaign to end money bail that has also recently seen states like New Jersey and New Mexico adopt policies to circumvent the for-profit bail industry, though none had yet eliminated bail completely.

In Marin, bond agents say that argument is false, adding that they play an integral role in the justice system, in that the service they provide is free of prejudice and bias.

“That argument about the poor can’t get out, I call that a bunch of malarkey,” said Glen Hubbard, president of 5 Star Bail Bonds at 76 San Pablo Ave. in San Rafael. “I’ve got stacks and stacks of bonds that I’ve issued. Without us, the poor don’t get out; the poor are going to stay in jail even longer under the new law, especially the minority groups.”

Furthermore, bond agents say nonmonetary release perpetuates a cycle of crime without consequence and will inadvertently increase preventative detainment.

It’s not just the bond sellers who are concerned.

Marin County Public Defender Jose Varela said he thinks SB 10 was a “well-intended piece of legislation,” but that “it got watered down” and relies too heavily on the risk assessment tools.

“The California Public Defenders Association, among others, basically don’t support it,” he said.

“Our office represents people who are living paycheck to paycheck, day to day, and for them, this risk assessment tool will often times be the nail in the coffin for them to remain in jail,” he said.

He said that if SB 10 does go into effect next year, he hopes that all stakeholders, including probation officers, district attorneys, sheriffs and local law enforcement officials come together “to ensure that we have fair application of the risk assessment.”

For early architects of the bill, like the San Jose-based civil-rights group Silicon Valley De-Bug, the version signed by Brown bears no resemblance to what they envisioned as a way to reduce the numbers of the people jailed before their trials simply because they can’t afford bail, a population that disproportionately skews toward people of color.

“This isn’t a gutted version of our bill, it’s a wholesale different bill,” De-Bug director Raj Jayadev said. “SB 10 was going to take out the obstacles from people’s liberty, like money bail and mandatory exclusions. This just replaces the exploitative money bail system with a preventative system that will lead to an increase, not decrease, in pretrial detention.”



Matt Ramsey, owner of the Marin Bail Bonds, is gathering signatures as part of an initiative aiming to oppose SB 10 on the 2020 ballot. (Alan Dep/Marin Independent Journal)

SB 10 was approved by the Legislature in August, after a nearly two-year push, with largely Democratic support. But it faced heavy opposition from the bail industry and some former supporters of the bill, who said significant amendments to the final version would unjustly expand the number of suspects jailed while awaiting trial.

The American Civil Liberties Union of California, an original co-sponsor of the measure along with De-Bug, and other organizations pointed to provisions giving judges greater discretion during the arraignment hearing to decide whether to release a suspect and on what conditions.

SB 10 also introduces a process for the prosecution to file for “preventive detention,” blocking the defendant’s release pending a trial if authorities think there are no conditions that would ensure public safety or their appearance in court.

The executive directors of ACLU affiliates, including Abdi Soltani of the Northern California branch based in San Francisco, signed a joint statement after the bill was signed.

“Unfortunately, this amended version of SB 10 is not the model for pretrial justice and racial equity that the ACLU of California envisioned, worked for, and remains determined to achieve,” they said. “We oppose the bill because it seeks to replace the current deeply-flawed system with an overly broad presumption of preventative detention. This falls short of critical bail reform goals and compromises our fundamental values of due process and racial justice.

“We nevertheless reiterate our commitment to working with the state legislature, and our partners and allies to create a strong, fair justice system for the benefit and wellbeing of all Californians.”

As for Ramsey, he said his work allows his clients to keep working, earn a paycheck and continue to pay their bills. He said that he helps people in need keep their lives together, and he’s going to continue doing what he does.

“I’m at the jail and on the court floor on a daily basis making sure my clients appear in court,” he said.

“If you don’t make it, then I’m boots on the ground to get you and and take you into custody,” he said. “That simply doesn’t happen under SB 10. ... It’s going to create an overwhelming tsunami of people being preventatively detained.”

Mercury News staff and the IJ wire service contributed to this report.



Revamping the cash bail system

By Davis Harper and Charity Maness
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Sep 20, 2018 Updated Sep 21, 2018



Brenda Yeadon with Jailbird Bail Bonds will have to retire early if a referendum for a vote to repeal Senate Bill 10 fails.
Courtesy photo

An initiative to replace the state's cash bail system with a pretrial risk assessment system was signed into law by Gov. Jerry Brown on Aug. 28.

"Today, California reforms its bail system so that rich and poor alike are treated fairly," Brown said in a statement.

Set to go into effect Oct. 1, 2019, Senate Bill 10 will eliminate the need for the bail bond industry, valued at \$2 billion in annual revenues.

Cash bail refers to a fixed amount deposited with the court to release a suspect from custody on the condition that he or she will be present at future court hearings and trials.

Under the current system, California judges set cash bail for defendants, but when a defendant is unable to post bail, or promise to pay the full amount, they can pay a fee – typically 10 percent of the bail – to a bail bonds agency to post the bond, making the agency responsible for ensuring that the defendant is present in future court proceedings.

The cost of the bail varies with the severity of the crime and the court's determination of the likelihood that a defendant will show up for trial. If the defendant shows up for their court date, the bail is refunded to the bail bond company, and it profits on the fee it collected from the defendant. If a defendant misses their court date, the bail bond company forfeits the bond, and an arrest warrant is issued for the suspect.

California Sen. Robert Hertzberg (D-Van Nuys) was a leading author on the bill to reform the bail system.

"A few years ago, I discovered that 63 percent of all the people in California jails are pretrial detainees – people not convicted of any crime but simply awaiting trial," Hertzberg said in a statement. "The average bail in California is \$50,000. If you can post it, you get out. If you can't, you sit and rot in jail for what can be months. To me, that is justice based on wealth and it's not fair."

The new system will assess the risk of individuals at three tiers via a “risk assessment tool” taking into account various factors to inform judicial decisions.

Likely a computer-generated algorithm, the particular tool used will vary from county to county, and it will require the approval of guidelines put in place by the Judicial Council, the policy-making body of the California courts, according to Katie Hanzlik, Hertzberg’s press secretary.

Low-risk defendants will likely be released after making a written promise to return to the court, leaving judges to determine conditions for release, such as supervision and travel restrictions, whereas high-risk individuals – charged with murder, among other first-degree felonies – will likely remain in detention until trial. The fate of medium-risk defendants will be subject to local standards.

Individuals arrested or detained for misdemeanors will be booked and released without being required to submit to risk assessments, with some exceptions.

Also introduced in the bill was the ability for prosecutors to file for a “motion of preventive detention” to block a defendant’s release before trial.

With about \$15 million in startup costs, the bill will allocate \$200 million per year from the state’s General Fund to run the program on an ongoing basis, according to Hanzlik.

Despite the bill’s intentions, it has received negative feedback from law enforcement, civil rights nonprofits, criminal attorneys and – to no surprise – bail bond business owners across the state.

In response to criticisms of the bill, Hertzberg said, “Not acting would have maintained the status quo, which already keeps poor people and people of color in jail indefinitely. Under SB 10, there will be no financial conditions for freedom.”

In opposition, District 4 Calaveras County Supervisor Dennis Mills called SB10 “an unfunded mandate to the county.”

While in favor of eliminating cash bail, Calaveras County Chief Probation Officer Samuel Leach expressed concern with the bill, as the Probation Department will be required to have probation officers work on weekends to comply with the 24-hour assessment after booking requirements.

“It will be very difficult for small counties to comply with that part of the bill,” Leach said. “We are still in the process of evaluating how SB 10 will affect us because there are still a lot of unanswered questions about what terms of supervision will be allowed, how much money will be allocated to our county and what our local Superior Court will require from Probation.”

Leach said the department is already preparing pretrial assessments, using state SB 678 funding.

“We expect to continue preparing assessments, so the most significant changes will probably surround how we supervise people released on pretrial supervision,” Leach said.

Leach is unsure of the ultimate cost, yet is certain there will be “indirect costs and impacts to other departments, such as the district attorney and sheriff.”

Angels Camp Police Chief Todd Fordahl opposed the bill for many reasons.

“Personally, I believe that this legislation further undermines our criminal justice system, and seems to be following a disturbing trend that, practically speaking, are attempts by the current administration to eliminate any accountability for criminal behavior,” Fordahl said. “I also believe that this particular bill will further clog an already overburdened court system, requiring the courts to come up with their own review and administrative procedures related to the language in the bill. A simple question: if it isn’t broken, why fix it?”

Fordahl wants to assure the public that “despite this administration’s ongoing trend toward ignoring victims and their rights, (local law enforcement) are committed to serving and protecting the public they serve.”

Though SB10 has been signed, Calaveras County Sheriff Rick DiBasilio is cautious about putting the cart before the horse, as many factors will come into play before October 2019, such as the gubernatorial election, as well as the question of whether the bill will remain in effect or intact.

“I do know that the California (State) Sheriffs’ Association is opposed to the bill,” DiBasilio stated.

That association joins the ranks of many opposed to SB10, including the American Civil Liberties Union of Northern California and multiple law enforcement agencies.

Jessica Farris, ACLU of Southern California director of criminal justice and drug policy, criticized the exceptions for misdemeanors as being too broad, ultimately giving judges too much discretion in deciding whether to detain or release a defendant in the time leading up to trial.

Robin Steinberg, CEO of the Bail Project, a nonprofit with the goal of “combatting mass incarceration at the front end by paying bail for tens of thousands of low-income Americans at risk of pretrial detention,” criticized the lack of transparency with the proposed “pretrial risk assessment tool” in a USA Today opinion piece published on Aug. 28.

“Rather than closely assessing the strength of the evidence in the case being presented, these computer models use algorithms to assess, among other things, how someone’s age, employment, drug use and criminal history will influence whether he might flee or commit a crime before trial,” Steinberg wrote. “Before someone is held in a jail cell pretrial, prosecutors should be required to produce real, objective evidence at an adversarial court hearing that grants the accused rigorous procedural protections, including the right to cross-examine prosecutorial witnesses and call witnesses and, of course, the right to have a lawyer by your side.”

Concerned that the bill would be an expansion of power for judges and prosecutors in pretrial proceedings, University of California, Berkeley, School of Law professor Erwin Chemerinsky wrote in a Sacramento Bee op-ed on Aug. 20, “The revised version of

SB10 gives judges unfettered discretion in deciding whether to keep a person in jail and has no mechanisms for monitoring the racial impact of these decisions.”

Chemerinsky emphasized that the bill has no criteria for how risks are to be determined, which gives judges total discretion to decide whether to release an individual and on what conditions. The key concern is that judges will “over-predict dangerousness,” Chemerinsky argues, as they could be subjected to criticism and recall for releasing a person who then goes on to commit a serious crime in the time before trial.

The bail bond industry is using every weapon in its arsenal to repeal the new bill.

The American Bail Coalition (ABC) has started collecting signatures for a referendum to overturn SB10. The organization will need 365,880 signatures before Nov. 26 in order to place the issue on the November 2020 ballot.

“ABC is very optimistic that we will exceed the signature requirements, considering the wide-range of opposition to Senate Bill 10 from so many organizations – many of whom originally supported SB10 prior to the bill being gutted in the final hours before passing,” ABC Administrative Director Chris Blaylock told the Enterprise in a recent interview. “Should SB10 be overturned, ABC’s desire is to continue to work with the California Legislature and all stakeholders to help craft more meaningful legislation that promotes public safety, due process and does not infringe on the basic civil liberties of defendants.”

Copperopolis bail bondsman Jay Lange closed down his business, American Eagle Bail Bonds, and moved out of the state two years ago when the bill was first introduced.

Eliminating cash from the bail system will lead to an increase in pretrial incarceration and over-crowding of jails, which will subsequently result in higher crime rates with jails forced to release misdemeanor offenders that would have otherwise been left in detention, according to Lange.

“There will be more crime on the streets,” Lange said. “Once these people are released, they won’t come back to court; it was our money on the line to return them.”

Another criticism is that the bill will give judges the ability to hold “high-risk” individuals without giving them the ability to present bail, according to Brenda and Bob Yeadon, owners of Jailbird Bail Bonds in Murphys for nearly a decade. These charges are deemed “violent crimes,” making the accused ineligible for own-recognizance (OR) or citation release, Brenda Yeadon said.

“If cash bail is eliminated, people in a situation like this will be unjustly punished,” Yeadon explained. “If said person got arrested on Friday night and the following Monday was a holiday, they would spend several days and nights in jail awaiting the arraignment. We have experienced cases of a defendant needing bail due to acute health, work, business or family needs. It is especially rewarding to have been able to help in these situations where it is already apparent that they are not the culprit. These defendants are grateful for the right to bail and never blink an eye about having paid (a) premium for the bondsman’s service.”

Yeadon also mentioned that the bail industry has made several proposals on reforming the bail system over the past two years, including lowering the bail schedules to make them more affordable, eliminating bail stacking (adding multiple bonds together to increase bond amounts), and expanding the group of people that come up with the bail schedules to ensure a fair process. These proposals have been ignored by those trying to reform the system, Yeadon said.

The Yeadons will be forced into full retirement if the ABC referendum fails, though they will keep their doors open until October 2019.

“We will invest in continued education and licensing in order to provide bail bonds to this community until such time as the outcome is certain,” Brenda Yeadon said.



Crisfield-Somerset

County Times

Letters and Commentary

Bail reform, pre-trial release algorithms a failed system

Maryland Attorney General Brian Frosh made a grand move last year when he chose to push bail reform on the public. A dubious risk assessment algorithm was supposed to reduce jail populations and make things more fair. Unfortunately, it hasn't worked out as planned and

the results have been nothing short of disastrous.

Frosh convinced the state's courts that approving a rule to basically do away with bail and going to a risk assessment system would work. Not only did it not do so, the pretrial jail population in Baltimore has increased by 22 percent in the first year! The new system wound up relying more on preventative detention (jail

without the possibility of bail) than on actually releasing defendants.

As poor as these results are, it pales in comparison to the federal program, which since 1984, has seen an increase in pretrial incarceration from 24 to 70 percent.

At its core, the issue is about ending money bail as a means of correcting disparities in the criminal justice system. However, Frosh made

the terrible decision of choosing the same path advocated by former U.S. Attorney General Eric Holder, which utilizes risk assessment algorithms as a key component of the system.

This is ironic, because Holder himself once cautioned against the use of risk algorithms, saying, "Although these measures were crafted with the best of intentions, I am
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Letters

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concerned that they inadvertently undermine our efforts to ensure individualized and equal justice." He also warned that they might "exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society."

Holder ultimately contradicted himself, but he was actually right the first time. Risk assessment is such a dismal failure that on July 30, 115 national civil rights groups, including the NAACP and ACLU, called for an end to algorithm-based pretrial risk assessments in the U.S. Once championed by the likes of Attorney General Frosh and the Pretrial Justice Institute, their once-great brainchild has now been reduced to a smoldering heap of ashes.

In a group-issued statement, Myaisha Hayes of the Center for Media Justice wrote, "Algorithms cannot undue the racial bias that exists in the criminal legal system. These and other high tech tools will always disadvantage communities of color and threaten to replace mass incarceration with digital prisons."

While some of the civil rights groups also called for the end to money bail in their statement, the results in Baltimore offer proof that if the right to bail is denied, more people will stay in jail. Computers offer neither judges nor society a "better" alternative to bail by electronically incarcerating the poor and classifying them like faceless numbers. Eliminating the human factor denies them access to the bail process, which includes the ability to accept terms put forth by a judge,

challenge it as excessive or explore other options.

Indeed, without a strong economic incentive to get someone out of jail, there is no counter-balance to the state's thirst for incarceration and electronic caging. Of course, a new crime cannot be committed out in the community when an individual is not at liberty. But liberty is what bail is all about, and judges must be afforded the ability to use their discretion to deny it when they feel it is necessary.

The need to strike an appropriate balance is a critical part of a properly functioning criminal justice system that truly serves the people.

In this current era of political division, it is important to not throw out our core constitutional values, but to recognize that preserving these precious guarantees, like the right to bail and individual due process, is critical to how our nation actually works.

Attorney General Frosh and the Maryland courts need to get together and fix the criminal justice system they have badly damaged. The time has finally come for us to put aside ill-conceived distractions like risk algorithms to focus on what's really important: enacting speedy trial reforms and properly funding the systems needed to get it done.

**Jeffrey J. Clayton, Executive Director
American Bail Coalition
Lancaster, Pa.**

— Mr. Clayton has worked 15 years in public policy and government relations, and also as a licensed attorney for the past 12 years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado.

The Atlantic

POLITICS

The Bail-Reform Tool That Activists Want Abolished

They worry that algorithms used to determine a person's flight risk will only perpetuate racial discrimination.

MADELEINE CARLISLE SEP 21, 2018



A sign advertises a Los Angeles bail-bond company. MARIO TAMA / GETTY

When Tyler Hubbard was arrested last year in Ocean Township, New Jersey, he was 22 years old. He, in his own words, “got into a big fight” with his stepfather, “and it went somewhere it shouldn’t have.” He was arrested around midnight, charged with second-degree aggravated

assault, and taken to the county jail. Hubbard waited there for roughly a day before he, along with about 10 others, was introduced to a pretrial case worker. “[That was when] they told us all our scores,” Hubbard remembered. “I was like a 2 and a 3, I believe.”

These scores were supposed to predict what Hubbard would do next if he were released from jail. They are a key component of New Jersey’s new pretrial system, which was revamped in early 2017 to essentially eliminate cash bail. In the first year, the reforms cut the state’s pretrial population by some 20 percent.

Hubbard said his attorney told him that under the previous regime, his bail would have been set around \$50,000, far above what Hubbard could afford. He would have sat in jail until his court date, costing him his job as an automotive technician, which he had only started two weeks before. Instead, Hubbard was evaluated by the Public Safety Assessment (PSA), an algorithm that generated two scores: The first predicted whether he would engage in new criminal activity; the second, whether he would fail to appear in court.

After consulting the scores in a pretrial hearing, a judge decided to release Hubbard with monitoring. He was able to keep his job. “Relieved would be an understatement,” he told me, describing how he’d felt. “It was fantastic.”

As calls to abolish cash bail grow louder across the country—from politicians, activists, and even some in corporate America—an increasing number of jurisdictions are transitioning away from a monetary system to one dependent on risk-assessment algorithms like the PSA. California, a state that has historically set some of the highest bail in the country, passed a bill doing so last month. Risk algorithms can be used at various junctures—from sentencing to parole hearings—but their use pretrial has garnered the most attention. Some have heralded these algorithms as agents of change, tools that help abolish a system that, in the words of Senator Bernie Sanders, creates “modern-day debtors prisons.” New Jersey’s reforms have seemed particularly successful: The Pretrial Justice Institute, a national nonprofit that studies bail practices, has given the state an A score, a grade no other state received.

But there's a problem: Even as the algorithms are praised for minimizing cash bail and the inequality it creates, an increasing number of civil-rights activists worry they perpetuate racial disparities within the criminal-justice system. In July, more than 100 civil-rights groups, including the ACLU, signed a statement of concern urging jurisdictions to stop using the tools. In the same missive, they outlined how to properly implement the algorithms if states do decide to use them. As more states turn a critical eye toward their own systems—and face public pressure to avoid certain reforms—they may have to decide between implementing a technology that could be corrupted, sticking with a (reformed) cash system, or pursuing a new form of justice that doesn't depend on either.

Activists argue that the algorithms are fundamentally flawed because the data they use to predict a person's risk could be influenced by structural racism: The number of times someone has been convicted of a crime, for example, or their failure to appear in court could both be affected by racial bias. As a result, they say, any bias that's baked into the data is replicated by the algorithms, but with the veneer of scientific objectivity.

“My concern [about using the tools] is that what you could have is essentially racial profiling 2.0,” said Vincent Southerland, the executive director of the Center on Race, Inequality, and the Law at the New York University Law School, which signed onto the statement. “We're forecasting what some individuals may do based on what groups they're associated with have done in the past.” Some activists also worry that even in jurisdictions that have adopted the tools in good faith, judges may not follow their suggestions in setting bail or other pretrial conditions, and the new systems may go unscrutinized because communities assume any problems have been fixed.

The push against using algorithms pretrial is relatively new, as bail reform has only recently gained steam. There are many different kinds in use: Forty jurisdictions use the PSA, others use algorithms created by state governments, and still others employ systems developed by for-profit companies or nonprofits.

No matter the algorithms' origin, activists have questioned the way scores are generated. The PSA, for one, uses a database of some 750,000 cases from more than 300 jurisdictions to identify risk factors. To determine a person's score, it requires specific information about them: their age, the charge in question, any other pending charges, any prior misdemeanor or felony convictions, if any of those convictions were violent, if they've ever failed to appear in court, and any prior prison sentences. Notably, it doesn't require a person's race—or their gender, education level, economic status, or neighborhood.

“We think [the concerns expressed in the July statement] are misplaced,” said Jeremy Travis, the executive vice president of criminal justice at the Laura and John Arnold Foundation, which created the PSA. He said he agrees with the groups' worries about structural racism, but noted that algorithms don't preclude other improvements to the pretrial system. “Risk assessment is not an impediment to reform,” Travis said. “It can be an avenue to reform.”

The inner workings of other algorithms are less clear, though—even intentionally so. In response to university researchers' requests for details, many jurisdictions have refused to turn them over, claiming the information is owned by private companies. Perhaps the most well-known risk-assessment tool is COMPAS, which got attention in 2016 after ProPublica published an article claiming its algorithm was biased against black defendants. The for-profit company that created COMPAS denied those allegations, but as *The Washington Post* wrote, it “refused to disclose the details of its proprietary algorithm, making it impossible to fully assess the extent to which [its technology] may be unfair, however inadvertently.”

The algorithms' scores aren't the only thing that concerns activists: They also worry about how actors within the criminal-justice system interpret them. “Predictions serve some sort of purpose, and the purpose they serve is to advise a judge on what's supposed to be done,” said Logan Koepke, a senior policy analyst at the nonprofit Upturn who studies how scores are implemented.

He pointed to a 2017 study from George Mason University that examined Kentucky's pretrial risk-assessment system, which was made mandatory in 2011. It found that the algorithm has led to significant changes in bail-setting practices, but only a small increase in actual pretrial release. Furthermore, the study showed that the changes eroded over time, as judges returned to their previous habits.

Koepke's research has found that pretrial tools might overestimate risk if the data they use are flawed. He gave the example of New York City, which announced in 2017 that it would use data spanning from 2009 to 2015 to redesign its pretrial algorithm. Though a data set that large usually helps correct for any erroneous information, the city's arrest practices over some of that period—specifically its stop-and-frisk program—were deemed unconstitutional, suggesting the numbers aren't a reliable guide. Writing in the July statement, civil-rights groups suggested measures jurisdictions can take when adopting risk-assessment tools that could help compensate for data flaws. Among them: prohibit the algorithms from ever recommending detention, give each defendant a hearing with robust due process, make the tools transparent by revealing how scores are generated, and have their creation include community input.

Activists and researchers alike note there are ways to reform a pretrial system without ever adopting a risk-assessment algorithm, such as ending money bail, restricting pretrial detention, and focusing resources on helping defendants return to court. Sakira Cook, the criminal-justice program director at the Leadership Conference on Civil and Human Rights—the organization that shepherded the July statement from civil-rights groups—gave the example of Philadelphia, which has decriminalized many offenses and focused its reforms on pretrial actors such as prosecutors, judges, and the police. New Jersey also underwent a number of reforms when it implemented its algorithm in 2017.

Other stakeholders in the pretrial world, such as Cherise Fanno Burdeen, the CEO of the Pretrial Justice Institute, don't believe it's realistic to completely abolish risk assessment. Burdeen pointed out that for decades, the Supreme Court has required courts to conduct these assessments to determine if someone should be released—

they've just been doing so subjectively. Judges necessarily deem some people unfit for release, and Burdeen says risk-assessment tools can make those rulings more objective and easier to track for bias.

Civil-rights activists argue that one systemwide change could correct for many of their concerns about assessment tools and judicial discretion: the presumption of release. In jurisdictions that have adopted that mindset, such as Washington, D.C., prosecutors and judges have to clear a higher bar in order to keep a person in jail.

Attempting sweeping reforms “may serve to complicate the system that we currently have,” Southerland said. “But I think if we’re dealing with people’s liberty and lives, then that complication is really a low cost to pay.”

As for Tyler Hubbard in Ocean Township, the new pretrial system meant his life was minimally disrupted. He pleaded guilty to third-degree aggravated assault, and was sentenced to two years probation with no jail time. “I’m very thankful for that,” he said.

We want to hear what you think about this article. [Submit a letter to the editor](#) or write to letters@theatlantic.com.



MADELEINE CARLISLE is an editorial fellow at *The Atlantic*.
Twitter

BAIL REFORM 'A STEP FORWARD' ... DEPENDING



A new bail-ending law that went into effect last week will put in place statewide the kind of pretrial assessments already in place in San Joaquin County. [KATHY WILLENS/AP FILE 2015]

By **Roger Phillips**

Record Staff Writer

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STOCKTON — For the past four years, individuals booked into the San Joaquin County Jail have undergone a pretrial assessment to determine if they should be released on their own recognizance or

retained in custody while their case moves through the court process. Though bail still is required in many instances, the pretrial assessment is a step toward removing a defendant's finances from the equation of whether or not he or she should be free from custody during the court process in San Joaquin County.

The pretrial-assessment system has drawn praise from an array of interested parties, including District Attorney Tori Verber Salazar, Public Defender Miriam Lyell, Sheriff Steve Moore and local political activist Sammy Nunez.

"It's a huge success," Nunez, the executive director of Fathers & Families of San Joaquin, said last week.

Though the bail system still exists in San Joaquin County, local proponents say the pretrial assessments give the county a leg up as local governments statewide begin to prepare for the dissolution of California's bail system 13 months from now.

Gov. Jerry Brown signed the new bail-ending law into effect last week. Pretrial assessments, already in place in San Joaquin County, will be put into place statewide.

Still, the new law in its final form is drawing mixed reviews, at best. Bail bondsmen see their industry being threatened. And interested organizations like the NAACP and the ACLU say the law doesn't go far enough in ensuring equal treatment for the rich and the poor, and for people of color and whites.

Local individuals weighed in last week.

Stephanie James, San Joaquin County Chief Probation Officer:

"Using a validated pretrial risk assessment tool will keep those who are at high risk in custody while going (through the court system), and will keep low-risk offenders with their families," James said. "We think it'll be better for public safety because it's based on risk, not how much money they have."

James is the local expert on pretrial risk assessments. Her office began using them in 2014-15, and she provided the **most recent assessment data**, for 2016-17, when 1,079 individuals were placed on pretrial monitoring while their cases wound through the courts:

- 92.3 percent of those released on their own recognizance attended all their court appearances.
- 97.2 percent did not have a new arrest.

D.A. Tori Verber Salazar

She said any system that removes or reduces economics as a factor in who remains in custody and who doesn't is a move in the right direction.

"It was a mistake to be driven by the economics of an individual," she said. "(The new system) is designed to preserve public safety."

Ralph Lee White, bail bondsman:

The former city councilman says bail schedules in California are too high, and that even if it hurts his business, he is in favor of any change that will lead to increased equity.

"Take your ordinary black, brown, Mexican or poor white person: They can't make the bail," White said. "Rich people know people. The average white person has a cousin or uncle or best friend (who can help with bail) ... all of those connections. White people have them, black people don't."

Outgoing Sheriff Steve Moore:

"Basically everything in the new law, we're already doing," he said. "The pretrial assessment has been working very well. ... Chief James has invited other jurisdictions to see how we do it."

Incoming Sheriff Pat Withrow:

"We already have risk assessments in place," he said. "That gives us a head start in putting this into place."

Withrow added that the 13-month period before the law takes effect “will give us a little time to hopefully work out some of the bugs. Hopefully, it’s fair for everyone else and safe for our citizens.”

San Joaquin County NAACP President Bobby Bivens:

Judges under the new system will have too much discretion over who is held in custody and who is released on his or her own recognizes, Bivens said.

He added that with bail no longer an option, those retained in custody after undergoing their pretrial assessment may end up spending just as long as ever in jail while their case slowly proceeds through the court process.

“It’s a step in the right direction, but it still doesn’t get accomplished what we have been after so long, and that’s to not hold people in jail ... (if) they’re not a risk to the public,” Bivens said.

Vice Mayor Elbert Holman, a retired law enforcement officer:

“What I have a concern about is the assessment matrix they plan on putting together: How will it be put together?” Holman said. “That’s really the key to whole thing.

“On the one hand, opponents say bail adversely affects the poor. I agree with that. At the same time, the matrix they set up could (still) affect the poor. I just hope they have input from a lot of diverse people as they put the matrix together.”

Miriam Lyell, Public Defender:

“I think it is a good step forward,” she said. “The money bail system of justice created an unequal system. Money bail had nothing to do with ensuring whether or not you would return to court or whether or not you were a risk to the public.”

Sammy Nunez, Fathers & Families:

Though he believes the newly approved state system still leaves too much power in the hands of judges, he echoed the prevailing view that the current system being phased out is driven too much by economics.

“There’s a significant amount of people in (jail) that pose no threat to public safety,” Nunez said. “In the state of California with the bail system that we currently have, it’s better to be rich and guilty than innocent and poor.”

Presiding Judge Linda Lofthus:

The Record sought an interview. Instead, Adrienne Forshay, the spokeswoman for San Joaquin County Superior Court, issued a statement.

“(Senate Bill) 10, a comprehensive reform of the bail system, is being evaluated on a county and state level,” Forshay wrote. “The court intends to fully implement the procedures developed therein. In addition, California courts will receive guidance and direction from the Judicial Council. However, a judge cannot discuss his/her views on a specific piece of legislation and how he/she intends to implement said legislation.”

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The Washington Post

Business

Petition drive backed by private-equity company pays \$3 a signature to overturn California's new law ending cash bail



Sidewalk solicitors in California are being paid \$3.25 for each signature they gather in support of a referendum on the state's new bail law. Here, a man seeking signatures approaches shoppers in National City, Calif. (Peter Whoriskey/Washington, D.C.)

By **Peter Whoriskey**

October 29 at 10:47 AM

SAN DIEGO — Backed by a private-equity firm, a large bail-bond company here is financing a campaign to repeal California's landmark criminal justice reform.

The new law would abolish the state's bail-bond companies, and in response, a handful in the industry have raised more than \$2.5 million to repeal the measure. The largest share of that, almost \$800,000, comes from Triton, a bail company owned by Endeavour Capital, an Oregon-based private-equity firm that has managed billions in investments.

The donations are paying for an army of campaign workers who have descended on California's shopping centers to beseech passersby for petition signatures. The campaign, which needs 365,880 names to put the measure before voters in 2020, pays the sidewalk solicitors a few dollars for each signature — the going rate around San Diego was \$3.25. Arithmetically, the donations may be enough to delay the law's implementation for at least a year.

"You gonna help me out, sweetheart?" asks a woman with long fake eyelashes accosting shoppers at a Walmart in exurban San Diego.

"Señora, es usted un votante? Would you mind signing?" says a clipboard man in a Spider-Man T-shirt a few miles away at another Walmart.

"Hello, shoppers," says a man in a Los Angeles Chargers hat at still another Walmart. "Do you have a minute to keep dangerous criminals in jail?"

The impetus for the new law arose from critics who say the bail system leads to the incarceration of many defendants who pose no threat to society and languish in jail merely because they are poor. Under the new law, courts would decide who should be released, basing their decisions on defendants' records, the nature of the accusations and other factors.

The legislature passed the bill by a wide margin, and Gov. Jerry Brown (D) signed it on Aug. 28, saying that "today, California reforms its bail system so that rich and poor alike are treated fairly."

Shortly afterward, however, opponents began the petition drive, an effort that state Sen. Robert M. Hertzberg (D-Van Nuys), who sponsored the new legislation, called "naked capitalism."

"Voter referendums are supposed to be about direct democracy — now wealthy people can simply write big checks," Hertzberg said of the petitioners for hire. "The reality is that California is the biggest bail

market and has the highest bail rates in the country. If these companies can delay it for a year, they can make money for a year.”

By engaging in a statewide political campaign, the private-equity company may bring a level of publicity that investors often prefer to avoid. But if enacted, the new law is likely to be ruinous to Endeavour’s investment: Without bail requirements in court, customers for the bail-bond companies would vanish.

John E. von Schlegell, co-founder of Endeavour Capital, wrote in an email that “as board members we are aware of the referendum but we are not involved in any of the details here at Endeavour.”

“The companies we invest in determine their own advocacy on issues that range from LGBTQ causes to homelessness to unions to health care,” von Schlegell wrote. “Endeavour has not taken a position on this referendum, or any ballot measure for that matter. ... We do support the company’s goal to continue to operate (legally and ethically) in California.”

He recommended that The Washington Post talk to executives of Triton, the bail firm that Endeavour owns.

Triton executive Herb Mutter said the company made the donation because the new law “would wipe out the bail industry in California.”

He added: “We also think it is not good law. The notion that people are languishing in jail merely because they are poor is not supported by the facts.”

Although the bail-bond industry has been characterized in the past by small storefront businesses operating near county courthouses, Endeavour’s bail company is of a larger scale, and its backing by a private-equity firm creates an even more unusual profile within the bail industry.

In their search for profits since the recession, private-equity firms have explored new markets and increasingly invested in companies serving the poor and vulnerable. They have bought up payday lenders, detention centers, nursing homes, prison phone services and homes for low-

income renters, according to the Private Equity Stakeholder Project, a nonprofit group that has tracked the industry.

Likewise, in 2012, Endeavour Capital invested in Triton and owns almost two-thirds of the company, according to 2017 state filings. It owns a similar stake in an affiliated insurer, Seaview Surety, which underwrites the bail amounts. The Triton bail companies operate under the name Aladdin, and last year, the Aladdin companies put up about \$700 million in bail in California, according to Post estimates that are based on insurance filings.

Endeavour says in its advertising that the bail company “fulfills a constitutional right.”

“Aladdin fulfills a constitutional right for its customers by providing expeditious pretrial release while ensuring a high rate of court appearances,” according to Endeavour’s website. It says that Triton is also the “the largest retail pretrial release service provider in America.”

Although Endeavour touts the constitutional underpinnings of its services, some legal scholars have looked askance at the bail-bond system.

In most states, people charged with crimes post bail money to be released before trial. The bail amount is supposed to ensure that a defendant will return for the next court date. If the defendant shows up for trial, the bail money is returned.

Criticism of the system arises because many defendants — about a third of the people in California’s jails, Hertzberg said — cannot afford bail.

Some low-income defendants simply sit in jail. Others turn to bail-bond companies, which put up the bail on their behalf. The companies typically charge the defendants or their families 10 percent of the bail amount for this service. For example, if a judge sets bail at \$10,000, the defendant pays the bail-bond company \$1,000, and the bail-bond company puts up the \$10,000. When the defendant shows up for trial, the bail-bond company gets its money back. It generally does not return the \$1,000 to the defendant, however.

“If you or your loved one has been arrested, Aladdin Bail Bonds guides you through every step of the bail process, helping make getting released

from jail simple and fast,” Aladdin says on its website. “We are the largest, most trusted and most cost-effective bail service provider in California.”

Four states — Illinois, Kentucky, Oregon and Wisconsin — have largely banned commercial bail-bond companies. Many other states are weighing reforms, too.

It is unclear, however, what will happen in California. The repeal campaign appears to have enough money to gather the required signatures — enough that it recently raised the pay per signature around San Diego from \$2.25 to \$3.25. It has until Nov. 26 to present the signatures to state officials.

If the repeal question gets to voters, moreover, the politics may be intricate and confusing, highlighting intraparty divisions.

Although the bill received broad support in the legislature, the coalition of progressive groups that supported bail reform has splintered. Most notably, the American Civil Liberties Union, which has long campaigned for changes to the bail process, withdrew its support for the bill because, the group said, the law could lead to more defendants being held.

“As much as we would welcome an end to the predatory lending practices of the for-profit bail industry, [this bill] cannot promise a system with a substantial reduction in pretrial detention,” the executive directors of California’s ACLU affiliates said in a statement. “We oppose the bill because it seeks to replace the current deeply-flawed system with an overly broad presumption of preventive detention.”

Jeff Clayton, executive director of an industry group known as the American Bail Coalition, echoed the ACLU, saying the new system will mean that more people — not fewer — will be locked up pending trial.

“They’re going to lock everyone up. They’re going to have an algorithm to decide who stays in jail. And no one’s going to be able to post bail,” Clayton said. “On all three counts, it’s a failure.”

Out in the shopping centers where signatures were being gathered last week, however, the issue aroused mainly confusion or apathy or workaday greed. Some signature collectors were unsure of what the

petition would do. If they couldn't answer a question, they shrugged and said, "We're just trying to let the voters decide."

They were clear, however, on the monetary value of each signature.

Steve Burke, a retired IT worker, was approached by a petition solicitor last week as he was leaving a store.

"No, I won't sign your petition," he said.

Turns out, he's in the petition business himself. "I could make a few bucks on my own name," he explained.

Whether the petition gatherers understand or care about the law or its repeal is also difficult to fathom. A solicitor outside the Walmart in National City was asked which side he supported.

"Toe-may-toes, toe-mah-toes," he said, shrugging. "It's just money to me."



[Peter Whoriskey](#)

Peter Whoriskey is a staff writer for The Washington Post whose investigative work focuses on American business and the economy. Previously, he worked at the Miami Herald, where he contributed to the paper's coverage of Hurricane Andrew, which was awarded a Pulitzer Prize for public service.



Critics: Computer era 'intruding' on bail decisions, producing 'devastating results'

LEGISLATION

By Amanda Robert | Oct 29, 2018



New Mexico Gov. Susana Martinez warns Utah about bail reform tools that attempt to predict whether the accused will commit a crime after being released

As the use of risk assessment to make pre-trial decisions like bail increases across the country, concerns over the tools used and their potential to hinder judicial discretion and perpetuate racial biases have also grown among criminal justice researchers, leaders and organizations.

Jeffrey Clayton, executive director of the American Bail Coalition, points out that computer algorithms have been used during various steps of the trial process, such as sentencing and probation, for decades, but they largely flew under the radar.

“Now that we think we could accumulate more data and we’re in a computer era, people think they are more predictive than maybe they did a few years ago,” Clayton said.

One pre-trial risk assessment tool that is gaining momentum is the Public Safety Assessment, launched by the Laura and John Arnold Foundation in 2013, to aid courts in making release or detention decisions. According to the foundation, the PSA is currently used in about 40 cities, counties and states, and more than 600 jurisdictions have expressed an interest in implementing the tool.

The PSA examines nine factors – age at current arrest, current violent offense, pending charge at the time of the offense, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear in the past two years, prior failure to appear older than two years and prior sentence to incarceration – to calculate two risk scores. One predicts the risk of a defendant failing to appear for future court appearances and the other predicts the risk of the defendant committing a new crime if released before trial.

A spokesperson for the Laura and John Arnold Foundation was unable to provide comments for this article.

Clayton contends that tools like the PSA have been posited as a replacement for bail, and in states like New Mexico and New Jersey, that’s what has happened – their systems are built on recommendations from algorithms.

Earlier this year, New Mexico Gov. Susana Martinez voiced concerns in an [online video](#) over her state’s implementation of the PSA and urged neighbor-state Utah to consider the “devastating results” before using the tool.

“The whole theory is that we can figure out who is dangerous and who’s not,” Clayton said. “We can keep the dangerous ones in, and let the non-dangerous ones out.”

“And they’re not challenged,” he added. “I just sat in the first appearance center in Albuquerque a couple of months ago, and the judge followed the recommendation of all felonies charged except for one case. They are ruling the day, in my view, and intruding on judicial discretion.”

Eric Siddall, vice president of the Association of Deputy District Attorneys in Los Angeles, agreed that while tools like the PSA should be viewed as informative, many in his organization fear that judges will use them as their only source of information.

“We really, more than anything else, have concerns that it is used as a crutch for judges rather than them utilizing their individual judgment and experience,” Siddall said.

Christopher Griffin, a visiting legal professor and research scholar at the University of Arizona, oversees PSA evaluation studies as part of his role with The Access to Justice Lab at Harvard Law School. In the past year-and-a-half, he has visited several counties in Wisconsin, Iowa and Utah to evaluate the PSA.

In his experience, he says, the PSA has been seamlessly implemented in a number of study sites. When the tool is used to its full extent, the judge should have more information at his or her disposal, but so should the prosecutors and defense attorneys when making their arguments.

“It is now heavily embedded in their criminal procedure, it is something they expect to hear about, how some of the risk factors are scored for the arrestee,” Griffin said. “It’s just part of the way these sites are now doing business.”

Bernard Harcourt, a professor of law and political science at Columbia University, has done extensive research on the history and operation of risk assessment tools in the criminal justice system. He says the largest problem he has seen is that they, without fail, have a racial skew.

Originally, Harcourt explains, race was a specific risk factor used in the tools, up until the 1970s. Even after it was deemed unacceptable to use race, he says, other risk factors, such as prior arrests and convictions, continued to correlate heavily with a racial skew.

“Given that our policing in this country tends to use racial profiling, those indicators tend to skew on race,” he said. “So it’s not surprising that a lot of studies that have looked at these questions have found what’s called a machine bias.”

In July, more than 100 civil rights and community-based organizations released a shared statement highlighting concerns with the adoption of pre-trial risk assessment tools. The groups, which include the National Association for the Advancement of Colored People Legal Defense and Educational Fund and American Civil Liberties Union, contend that risk assessment tools are not a “panacea” to reforming unjust bail systems, and instead, could increase racial disparities.

“Pretrial detention reform that addresses the injustice of people being jailed because of their poverty is urgently needed, but substituting risk assessment instruments for money bail is not the answer,” Monique Dixon, deputy director of policy and senior counsel for the NAACP Legal Defense and Educational Fund, said in the statement. “Biased policing practices in communities of color result in racial disparities in the data risk assessment tools rely on, making Black and Brown people look riskier than White people.”

Harcourt adds that another problem with risk assessment tools is that they “don’t really predict what we think they predict.” Rather than predicting who is committing a crime, he explains, they are predicting who will be arrested or convicted of criminal activity.

“Tragically, most people in society and even most people in the criminal justice system don’t understand the difference,” he said.

In addition to judicial discretion and racial bias issues, there are concerns over the validation and regulation of pre-trial risk assessment tools.

Siddall refers to a July 2017 case in San Francisco involving 19-year-old Lamonte Mims, who was arrested for gun possession and parole violations but released when the judge followed the recommendation of his PSA score. Mims, who was already on felony probation for an earlier crime, was allegedly involved in the murder of a 71-year-old man five days later.

When asked how something like that could happen, Siddall says he isn’t sure, because “the other problem is that there is not a lot of transparency.”

Clayton contends that best practices call for revalidation within 18-24 months, but in his experience, once a tool is implemented, it is not evaluated to make sure it is working or producing accurate results.

Or, he adds, even if tools are evaluated, results have not often been shared publicly.

Griffin explains the difficulty with providing results of his own PSA studies – even a year and a half into his experiment, he is still working to bring cases into the data that will be analyzed once those cases all come to an end.

“We won’t have a final data report until 2022,” Griffin said. “When it comes to any conclusions about the effectiveness of the tool, we have so little data at our disposal and don’t make any statements about that. It is far too premature.”

Harcourt expects the use of risk assessment tools to continue to increase in the next few years, largely because they make it easier to redirect the responsibility for making tough decisions.

“No one wants to be responsible for the errors, particularly, parole boards or criminal justice decision makers who could be responsible for the subsequent crime,” he said. “So using these tools is a nice, convenient way for humans to insulate themselves from the consequences.”

Bills seek to make bail system more fair for low-income defendants

By  Nick Kipper November 2, 2018 8 hours ago

By NICK KIPPER
Capital News Service

LANSING — An overhaul of the state’s bail system to focus more on a person’s individual case and legal history rather than the ability to pay is being pushed by legislators and criminal justice reform advocates.

People charged with crimes must pay their bail directly to the court. If they are unable to afford the bail set, they are detained in county jail, possibly until trial. The bail system has been used historically to ensure defendants show up for their court date.

“That’s a period of time where you’re not going to your job, not earning money, not able to care for your kids,” said John Cooper, the associate director of policy and research at Safe & Just Michigan, a nonprofit organization that focuses on criminal justice reform. “There needs to be an individualized look at someone’s case before taking away their liberty.”

The time between an arrest and a pretrial hearing usually takes a few weeks, and it costs taxpayers \$60 to \$75 a day to house someone in a county jail, according to Cooper.

Defendants often choose to plead guilty to avoid further jail time if they cannot afford bail, regardless of innocence or guilt, Cooper said.

A nine-bill package awaiting action in the House Judiciary Committee would ban the use of bail schedules, which judges often use to pre-determine bail amounts for defendants, regardless of their personal circumstances. Such bail schedules can allow higher-income people to avoid jail for the same charges that put lower-income people behind bars and has been challenged under the U.S. Constitution.

Sponsors include Reps. David LaGrand, D-Grand Rapids; Julie Calley, R-Portland; Tommy Brann, R-Wyoming; and Sara Cambensy, D-Marquette.

Safe & Just Michigan, the American Civil Liberties Union of Michigan and the Mackinac Center for Public Policy, which has written a report on the issue, also support the legislation.

Another major change in the package would expand the use of appearance tickets for all misdemeanors. That means defendants charged with relatively minor crimes wouldn't be jailed before they must appear in court.

"As long as someone shows up for court and doesn't do anything problematic before the date, their record stays clean and they can continue their daily life with work or school and let the justice process play out separately," Cooper said.

Most stakeholders support changing the bail system in concept, but there's disagreement in what the details should look like, Cooper said.

The American Bail Coalition, based in Franklinville, New Jersey, is a trade association that lobbies for the bail industry and insurance companies that insure bail bonds. It is a major voice opposing bail changes nationwide, according to Cooper.

People who cannot afford bail themselves often turn to a bail bondsman, which requires a nonrefundable fee of 10 percent, Cooper said.

"Michigan's bail system already has significantly reformed itself over the years to deal with the many problems caused by over-dependence on pretrial incarceration," said Jeff Clayton, the executive director of the American Bail Coalition, in a written statement. "We do not think that large -changes,,

including reducing the ability for judges to set monetary bail in appropriate cases is warranted.”

A defendant’s bail is determined by a judge, and the goal of the report and the legislation is to help judges understand the consequences of keeping people who haven’t been convicted in jail because they can’t afford to pay, said Kahryn Riley, the author of a report on the state’s bail system by the Mackinac Center for Public Policy.

The Midland-based center is a free-market-oriented think tank.

“It really does come down to the money and doesn’t account for the severity of crime,” Riley said. “In terms of public safety, I think most people are pretty surprised to learn that often more dangerous people who can afford bail go free.”

Judge Thomas Boyd of Ingham County District Court recently completed a six-month pilot program that released anyone accused of a misdemeanor who promises to appear in court, issuing them a personal recognizance bond where no money changes hands.

Riley said the failure-to appear-rate in Boyd’s court declined during the pilot period.

Arizona, Illinois, Maryland and New Mexico passed legislation in 2017 that minimizes the impact of a person’s financial standing on decisions regarding their release. In August, California became the first state to abolish cash bail completely.

Riley doesn’t advocate eliminating cash bail altogether, but suggests judges rely on alternative methods before defaulting to bail, such as electronic monitoring, curfews, travel restrictions and no-contact orders.

“It’s important for judges to understand that they need to make individualized decisions that actually account for each defendant, and that’s due process,” she said.

ABOUT NICK KIPPER



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Lessons from California's Bail Reform Law

November 1, 2018 | in [General](#)

NOVEMBER 2018 BAR BULLETIN

By Jeffrey J. Clayton

Bail reform has always been a controversial subject, typically associated with arguments about rich versus poor people, and how far should the presumption of innocence go when it comes to persons charged with violent crimes.

California's legislature recently passed Senate Bill 10 regarding bail reform, which was signed into law days later by Gov. Jerry Brown. It replaces California's current bail system with a no-money bail system similar to that used in Washington, D.C. A defendant will either be detained with no bail, or released on recognizance with or without pre-conviction probation and supervision. The decision to detain or release is based on the use of a risk assessment algorithm, which will sort people into three categories: low-, medium- or high-risk. Low-risk — you go home; medium-risk — you are supervised; high-risk — you get pretrial detention with no bail. The legislation leaves it to the California Judicial Council to figure out how to do the sorting, and what algorithm or algorithms to use.

California mangled the entire process in a case of classic political mismanagement, which included the extremely hurried vote on the Senate floor, which caught even political veterans off guard. What can Washington learn from the bunglings of the Golden State? First, Washington, like California, is a right-to-bail state. Historically, many states expanded the scope of law beyond the mere federal prohibition against excessive bail. Washington is one such

case, in which all persons were deemedailable by “sufficient sureties,” except in cases where they may be facing a life sentence.

As for the meaning of “sufficient sureties,” that has always meant setting a dollar amount when a person is not otherwise released on his or her own recognizance. How that dollar amount has been satisfied has changed over time, with the first legitimate, for-profit bail indemnity companies opening their doors in San Francisco in the late 1800s. By 1912, in the case of *Leary v. United States*, the U.S. Supreme Court would depart from English law and bless the system of indemnity contracts for bail, with Justice Oliver Wendell Holmes, Jr., calling the distinction between a personal surety and indemnitor “mundium.”¹

With that in mind, the first lesson Washington can learn from California is that if the goal is to ditch bail altogether and go to a no-money bail system, the state constitution must be changed in order to accomplish that. Specifically, the right to bail must be eliminated in favor of giving the state the power of general preventative detention — that is, detention without bail.

In its implementation report, the California Judicial Council noted that Senate Bill 10 was just like the systems recently introduced in New Jersey and New Mexico. Yet, it failed to mention that both states had to change their constitutions to put into effect what Senate Bill 10 promised to achieve. In fact, the bill conflicts with the limits set forth in many categories of the California Constitution. Some legal experts have concluded that California erred in putting the constitutional cart before the horse — and for that reason the entire scheme will inevitably be struck down. Washington would be wise to avoid making that same mistake.

The Pandora’s Box of preventative detention is another problem that California never thought through clearly. Because it ramrodded Senate Bill 10 through in only a few days, there was never time for proper discussion. Indeed, dipping one’s toe into the waters of preventative detention must be done with the utmost care.

Preventative detention has very stringent procedural safeguards. The two most critical are: (1) that no one remains in jail until a prosecutor has the opportunity to file a motion to prove by clear and convincing evidence that a person is a danger or a flight risk; and (2) that all such persons must be tried, at least under federal statute, within 90 days. These requirements put an extreme burden on the criminal justice system, requiring new public defenders, judges and prosecutors. For private defense counsel, this means charging their clients for a

hearing to get out of jail and to try bail cases long before they get to the underlying facts in the cases. This not only puts a strain on private attorneys, it effectively puts them out of financial reach of many defendants.

At the end of the day, due process is a limited resource, one that serves us best when it is applied to the most critical parts of criminal justice, such as trials and sentencing — not on bail. This is why we saw two other states — Delaware and Idaho — undertake serious and lengthy deliberations on changing their state constitutions, which resulted in rejecting these moves. Further, history has proven over a generation that preventative detention policies do not reduce crime, and, in fact, detain too many persons pending trial. The federal system has nearly tripled pretrial incarceration since the passage of the Bail Reform Act of 1984. In New Jersey, motions are now filed for a detention in a majority of cases in which a person is arrested and brought to jail.

During the debate prior to the passage of the landmark Bail Reform Act, noted civil rights professor Daniel Freed warned Congress this would happen. He stated that it would open the door to the state condemning an individual as dangerous and likely to flee. Essentially, it would permanently label them without a criminal trial, while providing no means by which they could ever be exonerated. In the mid-1980s, the best article on this topic was “Preventative Detention: A Constitutional But Ineffective Means of Controlling Pretrial Crime,” authored by constitutional lawyer Scott D. Himsel. Two key concepts are described that have not changed since:

- (1) we are unable to predict to any degree of scientific certainty who is going to fail to appear and commit a new crime. Instead, we are left with grouping people into numerical categories with arbitrary tolerances; and
- (2) because of our inability to make accurate predictions as to specific individuals, we will over-detain many more persons than necessary in order to detain the person who would commit a new crime or fail to appear.

The case of *United States v. Salerno* upheld the federal preventative detention statute and allowed for the reforms subsequently implemented in New Jersey and New Mexico to be considered constitutional. In his dissenting opinion, Justice Thurgood Marshall declared that only police states have the power to detain with no bail and that, “The ease with which the conclusion is reached suggests the worthlessness of the achievement.”

Washington should be careful to avoid the trap of the preventative detention door. As professor Freed asked Congress in 1981, what is it we know today that

the drafters of the U.S. Constitution and the Judiciary Act of 1789 didn't know then? Expanding the use of preventative detention was a key pivot in the bail reform debate in California and, at last, put the evils of preventative detention on trial on a national stage. The amended version of Senate Bill 10 drew the immediate ire of civil rights groups, 55 of which opposed the final legislation, including the ACLU of California. Since then, the bail industry and civil rights groups have raised eyebrows for their unusual coalition resulting from their joint opposition to preventative detention policies and Senate Bill 10. Yet, no one can look seriously at what has happened in Washington, D.C., the federal system or New Jersey, and claim that a system of risk-based, preventative detention is the answer and is somehow fairer. This is glaringly obvious when one looks at the first factor most risk assessments evaluate: age at first arrest. In fact, the ACLU opposed these policies a generation ago, which should serve as a reminder that only time changes, but arguments remain the same. Certainly, few would debate that the current presidential administration should have the power to lock up anyone it wants without bail.

The second key point is that the promise of risk assessment algorithms has fallen by the wayside. The disintegration of the so-called third generation of bail reform was inevitable and has finally landed with a sickening thud. For those who are law-enforcement minded, the concern has always been that risk assessment algorithms get it wrong and that someone will get out who would not otherwise have been released and go harm someone. These cases have never been difficult to find, with one pretrial risk assessment in particular becoming infamous for determining prior felons in possession of a firearm as low risk.

In the spirit of greater pretrial liberty, this summer 115 national civil rights groups, including the ACLU and NAACP, recommended that jurisdictions no longer use pretrial risk assessment algorithms, due to concerns of trammeling constitutional rights and concerns of racial disparities. Combined with numerous scholarly articles recently published about the many problems with algorithms, we are seeing a tidal wave of sentiment rising against the generational use of these tools.

One critic, Robert Werth, a professor at Rice University, suggested that risk assessment did nothing to diminish the expansion of incarceration and massive increase of the use of probation and parole in this country. In fact, evidence shows that such algorithms actually fortify the system. In the process, risk assessment perpetuates itself by dehumanizing people into risk categories from which they may never escape and creates penal responses premised on this

information. These actions systematically ratchet up after each offense, regardless of guilt or innocence.

In light of the aforementioned seismic shift in thinking, one would have thought that the California legislature would have paused to evaluate the algorithm issue. Instead, it relentlessly steamed forward, delegating power to the judicial branch to make rules as to what algorithms could be used and how they were to be regulated. This created a huge problem, because if someone now wishes to challenge the validity, regulation or use of an algorithm (or offer evidence that it discriminates), that litigant will be tasked with suing the very branch of government that embraced the algorithm regulatory process in the first place.

In addition, it is clear that the algorithms will embrace substantive law. The regulators of such algorithms will have to decide the substantive risk tolerances: low, and you go home; medium, we supervise and electronically incarcerate; high, you immediately go back to jail and are not released. Those who are proponents of algorithms and the results they provide should be tasked with defending them. That should not be the role of the judicial branch of government. Further, the 115 civil rights groups who turned their backs on risk assessment subsequently noted a series of concerns that demanded to be addressed if a jurisdiction were to use a pretrial algorithm. Many of the supporters of Senate Bill 10 simply ignored them.

Tim Schnake, a self-proclaimed bail reformist, named this last, roughly 10-year period of bail reform as the “Third Generation of Bail Reform” in America. He has continued in his attempts to breathe life into what was presumably the “Second Generation of Bail Reform,” arguing for a risk-based system that has not worked over a generation in the federal system, and is proving extremely costly to states that attempt to implement it.

It should be abundantly clear to anyone who knows law that California’s Senate Bill 10 is unconstitutional, and will never see the light of day, nor should it. There is also a drive to put the issue before the voters, which is likely to succeed, and will delay the process several more years. Hopefully, California will be the last large jurisdiction to attempt the risk-based, no-money bail system, with a growing number of former advocates now concluding that what they previously supported, simply and fundamentally, does not add up. Further clarifying their reassessment is the stark reality of the billion-dollar price tag that will pad the rolls of the government and do nothing to stop the cycle of poverty, incarceration and supervision that drove this misguided endeavor from the outset.

The bail industry has been criticized and vilified, but the reality is the public is discovering that calling a bail agent is much easier than facing an evaluation by an unmotivated computer and government bureaucrat — and then facing supervision by another government bureaucrat, which includes electronic incarceration and other severe liberty-restricting release conditions.

Bail agents and underwriters have an economic incentive to make certain people are released — and released quickly. This serves as an appetite suppressant for the government's usual hunger for incarceration. In Maryland, judges chose detention rather than free-bail alternatives, spiking the pretrial population in Baltimore by more than 20 percent in the first year of bail reform. Not having the option of bail, indeed, leads to more jail time.

Over the last 10 years, we have learned once again that America's system of justice cannot be based on creating a greater governmental incentive for detention by computer algorithm. California is about to learn that lesson, too.

Editor's Note: See also "No-Money Bail Movement Fails To Deliver on Promises," KCBA Bar Bulletin, December 2017, available at: <http://www.kcba.org/For-Lawyers/Bar-Bulletin/PostId/293/no-money-bail-movement-fails-to-deliver-on-promises>.

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¹“In old French law, a tribute paid by a church or monastery to their seignorial avoués and vidames, as the price for protecting them.” Black's Law Dictionary at 1017 (6th ed., West 1990).

Los Angeles Times

POLITICS

Bail bond industry moves to block sweeping California law, submitting signatures for a 2020 ballot referendum

By JAZMINE ULLOA NOV 20, 2018 | 9:10 AM | SACRAMENTO



Bad Boy Bail Bonds in Los Angeles (Gary Coronado / Los Angeles Times)

A coalition of bail bond industry groups took a major step Tuesday toward blocking California's historic overhaul of the bail system, submitting more than enough signatures for a statewide referendum on the law in 2020.

If those signatures are verified by elections officials, the law signed by Gov. Jerry Brown in August would be suspended until the state's voters have their say — a two-year delay in the effort to eliminate cash bail, longer if voters ultimately overturn the law.

The law would eliminate the payment of money as a condition of release from jail and is expected to decimate a state bail bond industry that includes bounty hunters, surety companies and about 3,200 registered bail agents. Senate Bill 10 was slated to go into effect on Oct. 1 of next year.

“This is a reckless attempt to reform the state's bail system,” Jeff Clayton, a spokesman for the coalition, said in a statement. “SB 10 is the perfect example of last-minute deal-making by the governor, the Legislature and labor unions absent input from all stakeholders.”

Bail companies over the past two years have aggressively lobbied against efforts in Sacramento to overhaul the way judges assign criminal defendants bail while they wait for their cases to be resolved.

Brown's signature on SB 10 set the stage for abolishing the state's current money bail system, ushering in one of the most sweeping criminal justice reforms of his administration. Under the new law, counties will have to establish their own pretrial services agencies, which would use “risk-assessment tools,” or analyses, to evaluate people arrested to determine whether, and under what conditions, they should be released.

Only people charged with certain low-level, nonviolent misdemeanors — a list of charges that can be further narrowed by county — would be eligible for automatic release within 12 hours of being booked into jail. Judges would have greater discretion to weigh the release of all other defendants in a practice known as preventive detention.

Top state officials, judges and activists have hailed the new law, which has put California at the forefront of a national push to stop courts from imposing a

heavy financial burden on defendants who have not been convicted of a crime. But questions remain about its effect on the criminal justice system, and even some of its most passionate supporters worry it could lead to the incarceration of more people for longer periods.

The coalition to block the law has raised at least \$3 million for its referendum efforts.

Unlike a ballot initiative, which gives California voters the chance to write a new law, a referendum asks them whether they want to overturn a statute written by lawmakers. The bail industry would be asking voters to cast a “no” vote on the ultimate ballot measure to ensure the law’s defeat.

The political action committee organized by the bail industry collected 576,745 signatures in a little more than two months — more than enough needed to qualify for the November 2020 ballot. Elections officials must now verify those voter signatures; if enough of them are valid, the referendum could officially qualify for the ballot before the end of December.



Jazmine Ulloa

Jazmine Ulloa covers California state politics and policy for the Los Angeles Times and is based in Sacramento. A native of El Paso, she covered state and federal courts for the Austin American-Statesman in the Texas capital. Her work has appeared in Texas Monthly, the Texas Observer and the Boston Globe. She is a graduate of the University of Texas at Austin.



THE CALIFORNIA REPORT

Referendum to Block Bail Law Appears Headed for Ballot



Supporters of bail reform rallied in Sacramento on Aug. 23 in support of legislation to change the state's money bail system. They say it punishes the poor. **(Marisa Lagos/KQED)**

A new state law set to take effect next year that would eliminate cash bail in California appears likely to stall until it's put before voters in late 2020.

Spearheaded by the state and national bail industry, proponents announced Tuesday that more than 576,745 signatures in support of a voter referendum on Senate Bill 10 had been submitted to elections officials. That's over 200,000 more signatures than is required to get the referendum on the November 2020 ballot.

The law changes pretrial detention in California — eliminating county-by-county bail schedules that set the amount of down-payments a defendant can post to be released pending trial, based on the alleged crime. [Under the new system](#) that was set to take effect in October 2019, defendants' flight risk and threat to public safety would be evaluated as low, medium or high, and judges would decide who goes free and who should remain in jail awaiting trial.

American Bail Coalition spokesman Jeff Clayton called SB 10 "a reckless attempt to reform the states' bail system" in a written statement announcing the submission of signatures for the referendum. He noted that civil liberties groups, including the ACLU, [withdrew their support](#) for SB 10 after a series of late amendments.

"SB 10 is the perfect example of last-minute deal making by the Governor, the legislature and labor unions absent input from all stakeholders," said Clayton.

But the ACLU's goals are not aligned with the bail industry's, said Abid Soltani, executive director of the organization's Northern California chapter.

"We need to move forward to a system of pretrial justice where the vast majority of people can live their lives, go to work and be with their families while they await trial," said Soltani. "We do not want to go back to that system of exploiting people with financial bail while they're awaiting trial."

The mere qualification of the referendum will keep California's cash-bail system in place for far longer, though. The referendum would halt SB 10's implementation until the vote in late 2020.

"The commercial bail industry will spare no expense in order to turn the clock back to preserve their industry, and we expect them

to spare no exaggeration or misstatements or anything of that sort either, where they're going to try to mislead voters," said Soltani.

State Senator Robert Hertzberg, SB 10's author, relayed a similar reaction through a spokeswoman.

"It's no surprise to us that the billion dollar private-equity firms that control the bail bond industry in California have committed considerable resources to overturning SB 10," said Hertzberg's spokeswoman Katie Hanzlik in a written response. "They've shown that they will do anything to uphold the status quo of exploiting low-income Californians because it will keep their industry alive."

Referendum proponents say the law will cost billions as counties try to implement the new pretrial assessment system it requires.

But counties will continue to build that system over the next two years, Abid said, even if voters end up scrapping it in 2020.

Long before then, the California Supreme Court is expected to rule on [whether SB 10 is constitutional](#), as provisions of the state constitution guarantee the right to bail in all but the most serious cases.

San Francisco Chronicle

LOCAL // POLITICS

Anti-bail reform forces say they've got signatures for 2020 ballot measure

Melody Gutierrez Nov. 20, 2018 Updated: Nov. 20, 2018 5:33 p.m.



Bail bond companies leading a charge to overturn a new California law that would put them out of business say they have submitted 200,000 more signatures than needed to qualify their referendum for the 2020 ballot.

Photo: Kathy Willens / Associated Press

SACRAMENTO — Bail bond companies leading a charge to overturn a new law that would put them out of business say they have submitted 200,000 more signatures than needed to qualify their referendum for the 2020 state ballot.

The signatures must be verified before the measure can appear before voters in two years. If proponents have the 365,880 valid signatures needed, the referendum would put the bail reform law on hold until voters weigh in. Otherwise, SB10 to eliminate cash bail as a requirement for pretrial release will go into effect in October 2019 as scheduled.

“This is a reckless attempt to reform the state’s bail system,” Jeff Clayton, spokesman for the coalition pushing to overturn the law, said Tuesday. “SB10 is the perfect example of last-minute dealmaking by the governor, the Legislature and labor unions absent input from all stakeholders.”

Gov. Jerry Brown signed SB10 in August to overhaul a system that critics say keeps poor defendants locked up while those accused of more serious crimes post bail if they can afford it.

Under SB10, judges would decide whether a defendant should be released based on an assessment of their risk to the public and the likelihood they would return to court for trial.

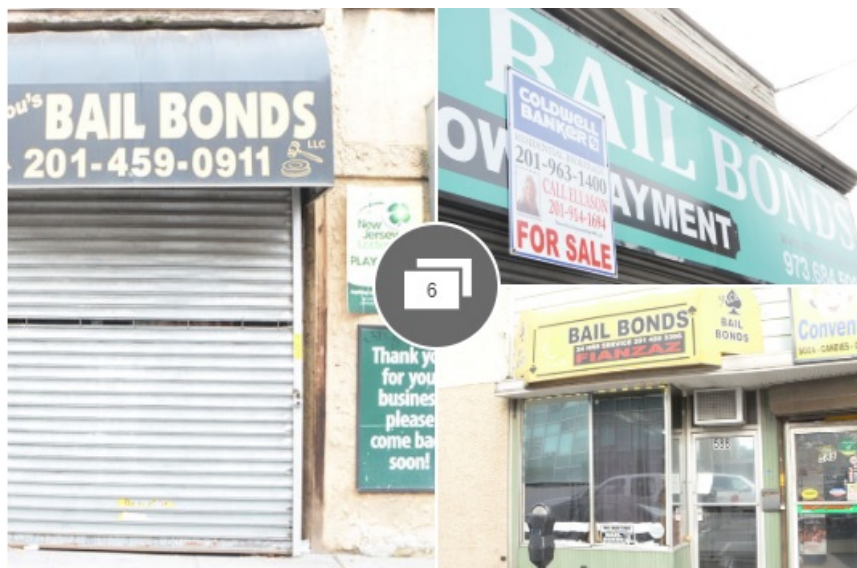
“The bail industry and its corporate insurance backers have spent millions qualifying this referendum to protect their ability to profit off a system that prioritizes imprisonment, regardless of guilt or innocence,” said Roxanne Sanchez, president of the Service Employees International Union California. “But justice must — and will — prevail.”

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HUDSON COUNTY

Serving their 'sentence' for bail reform -- mandatory work, but no pay

Updated 10:51 AM; Posted 10:49 AM



Gallery: Bail reform has decimated Hudson County's bail bond industry,
Nov. 20, 2018

By [Michaelangelo Conte](#)

The Jersey Journal

JERSEY CITY – The only thing worse than going out of business is being in business, Kirk Shaw said with a straight face -- for those who thought that might be a punchline to some old Henny Youngman joke.

"This is what I have been doing for 37 years and I don't know anything else," said the owner and operator of Kirk Shaw Bail Bonds. He was referring to the effects of the Criminal Justice Reform Act that eliminated bail in New Jersey and decimated the bail bond industry in Hudson County in elsewhere.

Two years after the law went into effect, bail bonds businesses still must continue to monitor outstanding bails, while having virtually no income.

"You still have to chase your fugitives -- it's worse than just going out of business," said the Hackensack-based Shaw, who noted that "99 percent" of his business has evaporated.

Bail reform was implemented on Jan. 1, 2017, to address the injustice of people charged with minor offenses spending a long time in jail awaiting trial because they could not afford to pay their bail. Under the new system, defendants are released and placed under supervision while they await trial.

The range of supervision ranges from checking in with Pretrial Services by phone once a month, to home confinement with electronic monitoring. Some defendants are jailed through the course of their prosecution if a judge finds they are a serious flight risk or a danger to the community or witnesses.

"Big" Lou Turdo, who owned Big Lou's Bail Bonds on Newark Avenue in Jersey City, says that for bail bonds financed before Jan. 1, 2017, bail bonds companies are still on the hook if a bail-jumper is not recaptured within a certain timeframe.

Even if caught quickly, the bail bondsman still faces a fine, he said.

"It's like having a bar and all of a sudden they pass a law saying no alcohol can be served," said Turdo, whose business has otherwise closed. "What are you going to do, stay open for people who still have a tab?"

Turdo, who once employed about 10 people, now works for the town of Secaucus. At night, he still tracks down any fugitive who skips on a bond created before bail reform went into place.

John's Bail Bonds on Newark Avenue remains open, but no business is coming in. Instead, a worker there goes over old files. The money John's put out for those bail bonds is still out there and waiting to be refunded.

"It's been pretty rough," John's Bail Bonds employee Luz Salamanca said as she went through boxes of old files to find cases that have come to an end without the office being notified. "The only way we get paid is finding cases that have been disposed of ... it's the same in Newark. Everything is closed."

Turdo argued that judges "had the right to release defendants under their own recognizance before this came about."

The bail bonds industry has filed lawsuits attacking the new system, but Turdo said that strategy has amounted to nothing more than legal fees

Salamanca said she is hopeful bail bonds will return. Turdo was less optimistic: "It's gone."

Jeff Clayton, director of American Bail Coalition, said New Jersey was one of the seven top bail bond markets in the United States, previously employing several thousand people. "Now it's almost completely wiped off the map," he said.

Clayton said those in the industry "are certainly closing up shop and going into other businesses." He said some move to other states where the bail bond industry is still active. "It was just unfortunate that some compromise couldn't be reached."

Salamanca, taking a break from looking through files at John's Newark Avenue office, said "There's no money, but we still have responsibilities. We still have to catch fugitives."



POLITICO California Pro Preview

A rundown of California's daily politics and policy.

Bail bond referendum

By KEVIN YAMAMURA (kyamamura@politico.com; @kyamamura), ANGELA HART (ahart@politico.com; @ahartreports) 11/21/2018 08:30 AM EST

BAIL REPRIEVE? Counties are still counting votes for the 2018 general election, but it's never too soon to talk about the big-dollar ballot fights coming in 2020.

Opponents of this year's sweeping legislation to eliminate cash bail said Tuesday they submitted enough signatures to overturn the law with a referendum in two years, reports POLITICO's Angela Hart. Should their signatures be certified, the law would be suspended until voters weigh in, giving the bail bond industry at least a temporary reprieve.

"This is a reckless attempt to reform the state's bail system," said Jeff Clayton, a spokesman for the coalition backing the referendum, which includes bail agents and companies. It argued the law has no mechanism to ensure defendants appear in court and "will cost billions" for law enforcement to track down those who don't show up.

Backers of the law say the current cash bail system has created an unequal criminal justice system that allows those with means to bail out, while those without remain unjustly behind bars. Under the law, beginning next year, money would be eliminated as a condition of release. Gov. Jerry Brown said in a statement when he signed Senate Bill 10 that the state had reformed its bail system "so that the rich and poor alike are treated fairly."

Service Employees International Union California, which backed the bill, promised a fight. A spokeswoman for state Sen. Bob Hertzberg, who authored the legislation, blasted the bail industry and said the referendum comes as "no surprise."

"They've shown that they will do anything to uphold the status quo of exploiting low-income Californians because it will keep their industry alive," said spokesperson Katie Hanzlik.

The bail bond coalition had 90 days after Brown signed the bill to submit 365,880 valid signatures. The group said it submitted nearly 600,000 signatures on Tuesday and had gathered them in only 70 days.

November 26, 2018

CAPITOL ALERT

Catch up fast + Valadao's lead shrinks + Conservative bright spots in OC BY SOPHIA BOLLAG

BAIL OVERHAUL ROADBLOCK

A bail industry-funded group says it has submitted signatures to repeal a sweeping overhaul of the state's pretrial detention system that lawmakers passed this year.

The law, SB10, would end bail in California and replace it with a new system that gives judges more power to decide who stays in jail while awaiting trial.

It's scheduled to take effect in October 2019. But the bail industry's signatures, which still require verification by the state, would place a referendum on the 2020 ballot to repeal the law and delay SB10 implementation until voters weigh in.

SB10 is a "reckless attempt to reform the state's bail system," said Jeff Clayton, executive director of the American Bail Coalition and spokesman for the referendum effort.

Katie Hanzlik, a spokeswoman for the law's author Sen. Bob Hertzberg, said it's not surprising the industry is trying to overturn it.

"They will do anything to uphold the status quo of exploiting low-income Californians because it will keep their industry alive," she said.

SB10 supporters say the existing system punishes people for being poor. Pretrial incarceration should depend on a suspect's threat to public safety, not their ability to pay bail, they argue.

Some civil rights groups who have long advocated for ending bail say the new law gives too much power to judges and worry it will result in more people being jailed before trial.

Despite their criticisms of SB10, some distanced themselves from the referendum effort last week.

"We will never support any effort to keep the predatory bail industry in business," said Abdi Soltani of the American Civil Liberties Union of Northern California. "The bail industry is not interested in equal justice or equal protection under the law, they are seeking to turn back the clock to protect their bottom line."



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Perspectives

How The 3rd Generation Of Bail Reform Imploded

By **Jeffrey Clayton** | November 25, 2018, 8:02 PM EST

Thirty-four years after the passage of the Federal Bail Reform Act of 1984, we have finally seen the implosion of the risk-based bail system after a series of noteworthy developments that effectively killed this misguided attempt at justice. 2018 marked the beginning of the end of the so-called "third generation of bail," a name given by reformers who attempted to co-opt the constitutionally guaranteed right to bail with a system that was neither fair nor viable. Even as the movement continues to disintegrate, its supporters continue to lurch forward in zombie-like fashion, seemingly unaware that their misguided mission is already dead.



Jeff Clayton

The current premise of bail reform is little changed from its original concept in 1984 — and just as unrealistic. In a 2017 [New York Times](#) op-ed, Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, wrote, "We should replace money bail with evidence-based risk assessments, based on the data that best predicts court appearance and likelihood of rearrest before trial." [1] Burdeen held that courts should be allowed to use preventative detention as a means of keeping high-risk defendants in jail. That is, individuals who posed a clear threat to public safety or were deemed a flight risk would be detained without bail being set for them. She proposed essentially a move to what is currently used in Washington, D.C., as well as the federal system.

The risk-based system advocated by Burdeen and other reformers actually began to seriously fall apart in July 2017. That is when Maryland's Court of Appeals changed its court rules to eliminate the option for judges to impose a financial bail and forced them into a sort of "take it or leave it" Hobson's choice — release defendants on a promise to appear with supervision, or instead, lock them up using preventative detention.

One year in, these rule changes increased the pretrial jail population in Baltimore City by 23 percent, according to WBAL-TV. Similar increases were also seen in Prince George's County between March 2017 (before the new laws kicked in) and March 2018. The increases were not just limited to urban areas. A November 2018 article in the Herald-Mail, a daily newspaper which serves rural western Maryland, noted the same trend. They reported that the percentage of all defendants detained prior to trial in lieu of bail in

Washington County had gone from 24 percent in 2016, the last year prior to bail reform, to a whopping 74 percent today. This increase mirrors the numbers posted by the federal system, which detained 24 percent in 1983 and currently detains over 70 percent. Without the option of bail, it is clearly evident that judges prefer detention and do not trust free release with supervision by government employees.

The second significant development in 2018 was the rejection of the risk-based bail system by academics and civil rights groups. Previously considered the gold standard by bail reformers, a mathematically based algorithm was used for risk assessment and hailed as the ultimate in impartiality and accuracy.

On July 30, 2018, 110 national civil rights groups, including the NAACP and [ACLU](#), issued a joint statement calling for the end of the use of pretrial risk assessments in the setting of bail in the United States. The statement read in relevant part, “Pretrial risk assessment instruments are not a panacea for racial bias or inequality. Nor are they race-neutral, because all predictive tools and algorithms operate within the framework of institutions, structures and a society infected by bias. Those facts weigh heavily against their use.”[2]

Myaisha Hayes, national organizer on criminal justice and technology at the Center for Media Justice, added her concern, noting that jurisdictions that rely on pretrial risk assessments place a technological barrier between individuals and their freedom. “Algorithms cannot undue the racial bias that exists in the criminal legal system,” she said. “These and other high tech tools will always disadvantage communities of color and threaten to replace mass incarceration with digital prisons.”[3]

The third notable event in 2018 was the release of findings of scholarly research that strongly suggest that risk assessment technologies have the opposite effect of what is intended.

Risk assessment tools were posited to be a way to reduce mass incarceration. Cherise Fanno Burdeen argued in 2016 in *The Atlantic*, “Many jurisdictions already know how to replace outdated pretrial justice policies like cash bail with risk-based systems that are safer, fairer, and more effective.”[4]

Yet, in his June 2018 peer-reviewed academic research paper, Robert Werth, a professor at Rice University, argued that risk assessments were actually detrimental to their intended goals. Citing the oft-repeated argument that risk assessment tools could be useful to reduce the sheer volume of mass incarceration, he said, “... the evidence suggests that thus far, risk assessment instruments have contributed to expanding the number of people enmeshed in the criminal justice system — encompassing imprisonment, probation and parole.”[5]

Numerous other academics in 2018 came to the same conclusion as Werth. John Logan Koepke and David G. Robinson's cautionary article in the *Washington Law Review* noted the extent to which various jurisdictions around the country were embracing pretrial risk assessment tools, and how they were constructed — using historical data as the cornerstone in an attempt to predict which defendants can be safely released. Koepke and Robinson wrote, “Scholars, system practitioners, advocates and journalists are increasingly questioning the extent to which pretrial risk assessment instruments actually serve these goals. Existing scholarship and debate centers on how the instruments may reinforce racial disparities and on how their opaque algorithms may frustrate due process interests.”[6]

Just when sanity seemed to finally be prevailing regarding bail reform and risk assessment in 2018, along came California. Under the sponsorship of Democratic state Sen. Robert Hertzberg, Senate Bill 10 was passed in August — essentially implementing the Federal Bail Reform Act of 1984 on a statewide level. The centerpiece of the legislation was the use of risk assessment tools and the expansion of preventative detention, which was already coming under increasing criticism since the bill was first introduced in 2017.

Hertzberg and the California legislature rushed through SB-10 only days after a number of significant amendments were made to the bill which had remained virtually unchanged for a year-and-a-half since it first made its way to the Senate floor. Despite the efforts of its proponents to sneak it past lawmakers and citizens alike, more than 50 civil rights groups promptly rose up to oppose SB-10. In its final form, it called for the creation of three categories of risk: low, medium and high. Low risk would mean going home for free; medium, defendants would get expanded pretrial supervision and monitoring; and high risk would mean preventative detention — no release at all.

The actual determination of who would be low, medium or high risk would be defined by the risk assessment tool, the lynchpin of the new system.

This drew the ire of the ACLU of California, San Francisco Public Defender's Office and noted law Professor Erwin Chemerinsky[7], among others, compelling them to reverse their previous positions on bail reform and demand that the legislature stop SB-10. Unfortunately, their cries of protest were largely ignored due to the massive support of California's public employee labor unions, the last remaining true supporters of the legislation. These groups backed the bill principally because the elimination of bail was based largely on the significant expansion of supervision of defendants who are out on release — by government employees. This would mean more jobs, but at taxpayer expense. It would likely pad the rolls of California's labor unions through the addition of thousands of new unionized public employees. Of course, it would be free to defendants, as well as judges, who would be likely to take full advantage of the costly new system, as they would no longer have the tool of bail as an option.

Unfortunately, none of its advocates wants to admit or accept that the third-generation of bail reform has failed. But the fact is that taking away the right to bail and replacing it with risk assessments and preventative detention does not work. It not only increases the jail population, but when defendants are out on release, it trammels their other liberties. The implementation of draconian measures, utilizing electronic incarceration technologies, such as house arrest, GPS monitoring and blood chemistry monitoring, is not the panacea of social justice for which it has been characterized.

Those who do not learn from history are doomed to repeat it. Risk-based bail reform is dead and it is time to bury it once and for all. The "rich-poor" rhetoric frequently trumpeted is misguided and the alternative systems are worse than the previously existing systems. This doesn't mean that bail reform isn't necessary. We have already come forward with a plan calling for a fourth generation of bail reform, which would strip away the tarnished layers of algorithmic risk, preventative detention and electronic incarceration from the criminal justice system. In its place would be a return it to the simple system that functioned remarkably well on this continent for 400 years.

We owe it to ourselves to embrace the best options possible for criminal justice solutions. The implosion and ultimate failure of risk-based bail reform offers us a great opportunity to fix this broken system. Failure to do so gives the government a green light to constrain our liberties and incarcerate en masse, while taking a sledgehammer to the precious American concept of presumption of innocence.

Jeffrey J. Clayton is a licensed attorney and executive director of the American Bail Coalition. Most recently, he served as general counsel for the Professional Bail Agents of Colorado. He previously spent six years in government service, representing the Colorado State Courts and Probation Department, the [Colorado Department of Labor and Employment](#), and the U.S. Secretary of Transportation.

"Perspectives" is a regular feature written by guest authors on access to justice issues. To pitch article ideas, email expertanalysis@law360.com.

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[1] <https://www.nytimes.com/2017/04/03/opinion/setting-bail-and-assessing-risk-to-public-safety.html>

[2] <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>

[3] <https://civilrights.org/more-than-100-civil-rights-digital-justice-and-community-based-organizations-raise-concerns-about-pretrial-risk-assessment/>

[4] <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>

[5] <http://news.rice.edu/2018/06/06/study-risk-assessment-tools-may-increase-incarcerations-rates-2/>

[6] <http://www.americanbailcoalition.org/wp-content/uploads/2018/06/Danger-Ahead.pdf>

[7] <https://www.sacbee.com/opinion/op-ed/article217018990.html>



Scott Shackford from the **August/September 2018** issue

"I did something stupid, and something I shouldn't have done" are the first words of Bill Peyser's tale of how he ended up getting arrested and jailed for the first time in his life at the age of 73.

Peyser, a San Francisco cab driver, says he had been frustrated with a couple of noisy younger neighbors in the spring of 2017. Exhausted and angry after a sleepless night that had led to him skipping a day of work, he decided to confront them on the afternoon of April 17.

The "something stupid" that Peyser agrees he shouldn't have done was to bring a .22-caliber handgun with him when he went to their apartment.

Though the men did not answer the door when Peyser repeatedly kicked it, they saw him through the peephole and called the police. There was no direct confrontation, but as Peyser was leaving, he fired the gun by accident while trying to uncock it in the hallway. According to one of Peyser's

attorneys, the bullet lodged in a wall in the lobby of the building a few inches off the floor. Nobody was hurt.

The police came and arrested Peyser. Peyser explained what happened, but he says police refused to believe it was an accident and insisted he was trying to harm his neighbors. He says he was prepared to plead guilty to what he had done—brandishing a weapon. But when he was brought before the court, he found he was being charged with attempted murder, two counts of assault with a semi-automatic firearm, and discharging a firearm at an inhabited dwelling.

What happened to Peyser next illustrates a chronic problem, one civil rights advocates are attempting to force states and counties to address. Peyser ended up stuck in jail for six months while awaiting his trial not because he was a threat to society—he was a septuagenarian with no criminal record who hadn't actually injured anyone—but because he didn't have enough money to pay for bail. Activists argue that cash bail systems violate the rights of people like Peyser who have been charged, but not convicted, of crimes. More and more, judges, lawmakers, and even prosecutors are starting to agree.

From 'Menace to Society' to Law-Abiding Citizen

Peyser's bail was set at \$625,000, based on the schedule for his alleged crimes. The attempted murder charge was later dropped, but the bail didn't change. If Peyser wanted to fight these charges from outside of a jail cell, he needed to either cough up cash or pay a bail bondsman a portion of the cost (typically 10 percent) to front the money for him.

Peyser did not have that much. He qualified for representation by a public defender because he was considered indigent. He and his defense attorneys tried to get multiple judges to reduce his bail, pointing out his stellar record and the possibility of losing both his taxi medallion and his rent-controlled apartment. He had turned the gun over to police and didn't want it back. He promised to stay away from the neighbors.

No dice. He would spend half a year in jail until his case was heard in October, at which point the jury watched the security footage of what happened, deliberated, and found him not guilty on all counts. "It looked like an old man doing something stupid," says one juror, speaking to *Reason* on condition of anonymity. The charges—which required proof of intent—didn't match what they saw.

"This is not a violent guy who needs to be put away," the juror says. Yet just months before, a judge had insisted that Peyser represented a public safety threat and a flight risk due to the severity of his

charges—he faced a possible sentence of 19 years in jail—as justifications for his remarkably high bail.

"Both judges accused me in open court of being a menace to society and one added that I was a threat to public safety," Peyser says. "And mind you, there had been no trial."

If Peyser had had the money, he would have been treated completely differently. "If you tell the judge you can't pay the bail, the judge drops any pretense whatsoever of impartiality," he says. "If you pay the bail, you're a regular citizen. If you don't pay the bail, you're treated as guilty until you're proven innocent."

Even though Peyser was ultimately exonerated, the whole incident imposed a steep cost. He had to give up his taxi medallion and is no longer working. His landlord also started proceedings to evict him, though he was eventually able to convince the landlord to let him stay.

'A Blight on the System'

Peyser's defense attorney, Chesa Boudin, wanted to use his case to challenge the constitutionality of California's money bail system. Boudin is on the board of the Civil Rights Corps, a non-profit legal group that uses litigation to try to overturn what its members see as court and detention mechanisms that disproportionately and unfairly hurt the poor and disenfranchised.

Boudin wasn't successful with Peyser, but in January, a state appeals court in San Francisco sided with the Civil Rights Corps in another case. "A defendant may not be imprisoned solely due to poverty," the three-judge panel ruled.

In that instance, a 63-year-old man was being detained, unable to pay the \$350,000 bail demanded for allegedly breaking into an elderly neighbor's apartment, threatening him, and stealing \$5 and a bottle of cologne.

"The problem this case presents does not result from the sudden application of a new and unexpected judicial duty," the judges noted after ordering a new bail hearing for the man. "It stems instead from the enduring unwillingness of our society, including the courts...to correct a deformity in our criminal justice system that close observers have long considered a blight on the system."

The days of judges deferring to fixed bail schedules, which are established by city and county governments and set dollar amounts based on the severity of charges, may be coming to an end. The days of money bail itself may even be numbered. California lawmakers are considering whether

to remake the state's pretrial system so that money is not a consideration in determining who remains behind bars prior to actually being tried. The state's chief justice and attorney general have declared support for such reforms. If California follows through, it'll be joining such states as New Jersey, which started a similar transition in 2016, and Alaska, which launched reforms earlier this year.

In the meantime, groups like the Civil Rights Corps are keeping the legal pressure on. Prior to the January ruling, the group had found success in Harris County, Texas, home of Houston. In 2016, it filed suit against the county's bail practices, arguing that the reliance on bail schedules to determine who was freed pretrial left 500 people stuck in jail each night for misdemeanors solely because they couldn't pay—not because they were dangerous or posed a flight risk. The group argued this violated the defendants' equal protection and due process rights. In April 2017, a little more than a week after Peyser was arrested, a federal district judge agreed and ordered the county to start releasing indigent defendants.

Harris County officials are now grappling with the need to make changes to their pretrial detention system as subsequent rulings made it clear that the courts had come to a dim view of using bail schedules as the sole determinant of who ends up stuck behind bars.

Punishment First, Conviction Later

Even a small amount of jail time can cause huge disruptions in the lives of the accused. The Pretrial Justice Institute was founded in 1976 with the help of Department of Justice funding to research and advise on policies for the treatment of people who have been arrested but not yet tried. Years of data and analysis have determined that three days in jail is all it takes to cause serious problems. When courts tie defendants' pretrial freedom to money bail, it ends up being a form of punishment for those who cannot pay, *prior* to any conviction.

His bail was set at \$625,000 based on the schedule for his alleged crimes. He did not

have that much. He spent half a year in jail before the case was heard, at which point he

was found not guilty.

"When those folks managed to get out, [their] jobs were gone," explains Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute. "It makes it impossible to make rent or mortgage payments. Families lose homes. It has an almost instantaneous detrimental effect on people's lives."

And there are a lot of these people in America, the world leader in incarceration. According to a 2018 study in the *American Economic Review*, half a million people in the country are being detained before their trial on any given day—nearly twice as many as in China. The report cites the use of money bail as a driving factor, noting that the typical defendant is poor. Less than half of them can afford bail even when it's set at under \$5,000.

When defendants are stuck in jail while awaiting trial, data indicate they're more likely to plead guilty or be found guilty of crimes. They're also likely to be given longer prison sentences. This is partly a result of their not being in a position to bargain with prosecutors, because they're stuck behind bars and desperate to move things along.

For low-level crimes, all that time spent in pretrial detention can be equivalent to the length of the sentence they'll get if they're found guilty anyway. A poor defendant who can't afford bail may spend days, even weeks, in jail waiting to see a judge for a crime where prison time might not even be required. At that point, it's hard to justify spending time or money fighting the charge, even if backing down leaves an innocent person with a criminal record.

"Everybody who works in the system knows that the assembly-line cash bail system coerces guilty pleas," says Civil Rights Corps founder and executive director Alec Karakatsanis. Because American courts don't have the manpower to prosecute and try every person who gets arrested, he argues, "the system needs a way to coerce them into pleading guilty. The most effective way is to keep them in jail."

Long Coming But Slow Going

Spring 2018 finally saw calls for pretrial reforms start to spread across the country.

In Atlanta, media attention on the case of a homeless man who spent three months in jail because he couldn't afford \$200 in bail for a charge of soliciting on a roadway prompted the City Council and mayor to change the municipal court's system, cutting out cash bond requirements for several low-level nonviolent crimes. New Philadelphia District Attorney Larry Krasner, voted into office in November 2017 on a criminal justice reform platform, announced in February that prosecutors there would stop asking for cash bail for low-level offenses. Philly's City Council also passed a resolution asking the state to end cash bail. In his state of the state address in January, Democratic New York Gov. Andrew Cuomo called for an end to cash bail for misdemeanors and nonviolent felonies there as well.

This isn't only happening in Democratic strongholds, either. Arizona and New Mexico have seen pretrial detention reforms to reduce the dependence on money bonds for release. And legislation has been introduced in Ohio to use assessment tools to help judges determine release risks and reduce the dependency on bail.

The Pretrial Justice Institute sees the current push as the third generation of bail reform efforts. In the 1960s, Congress established a statutory right to bail unless the defendant is deemed a flight risk. (The Eighth Amendment protects against excessive bail *when offered* but doesn't require that bail be an option in a given case.) Whether the arrestee might commit more crimes if released was not initially considered relevant. That changed in 1984, with a reform permitting federal courts to keep people imprisoned prior to trial if they're deemed a threat to the community. The law was upheld in a Supreme Court challenge in 1987.

Burdeen believes the latest wave of reform efforts dates to 2011, when then–Attorney General Eric Holder hosted a symposium on the topic at the Department of Justice. He called for using risk assessments and other evidence-based tools to help courts decide who is safe to release. He also encouraged an expansion of pretrial services across the country—court staff devoted to tracking and communicating with defendants to make sure they don't skip out on court dates or commit crimes while freed. Burdeen says they've spend the past eight years working to push those tools out to states and cities.

Years of data and analysis have determined that three days in jail is all it takes to cause serious disruptions. "When those folks managed to get out, [their] jobs were gone," an advocate explains.

But seven years later, meaningful change is just getting underway. Part of the reason is that what happens when a person gets arrested can vary widely from state to state and even from jurisdiction to jurisdiction. Courts across the U.S. don't all approach pretrial release decisions in the same way, so there's no single implementation plan that can be adopted in one fell swoop. Changes have to happen bit by bit. And since these reforms threaten a billion-dollar industry, bail bond representatives have been lobbying lawmakers and appealing to the public to try to stop reform in its tracks.

'We Had Gangs Putting Up the Money'

Peyser would have faced a far different pretrial experience had he been arrested in Paterson, New Jersey, instead of San Francisco. At the beginning of 2016, the Garden State launched a massive transformation of the pretrial detention procedures used in its district courts that has nearly eliminated the use of money bail as a mechanism for determining who goes free and who remains behind bars. Instead, the state now has a complex system involving case-by-case analyses and a bureaucracy devoted to keeping track of defendants to make sure they show up for court.

Visit the Passaic County Superior Court and you might not even hear the word "bail" during pretrial hearings. On a Monday afternoon in February, those arrested late Saturday, Sunday, and early Monday are brought in front of Judge John Meola (virtually—they remain in jail but appear on a monitor). Meola presents a recommendation from Pretrial Services of each defendant's risk factor. It's up to prosecutors to request a detention hearing if they believe a person is too dangerous to be let out. If not, the judge will order the defendant released, often with conditions requiring him or her to check in regularly with the pretrial staff.

On the day of my visit, prosecutors do inform the judge they want to detain a few people. In those cases, the defendant will be held pending a detention hearing in three to five days in a different courtroom. There, another judge will preside as the prosecution and the defense argue over whether the individual should be freed prior to his or her trial. There are unlikely to be debates over bail amounts; judges technically still have the authority to demand money bail in some situations, but last year they exercised the option only 44 times. If defendants violate the terms of their release, they're sent back to the same courtroom, where they may see their pretrial freedom revoked.



Joanna Andreasson

Today, Judge Donna Gallucio will decide whether Anthony Harris, 47, will be allowed to leave the jail. Harris was arrested the previous Tuesday in a drug bust, along with his brother, Charles. Police accuse the two of narcotics trafficking. During a short chase, Charles tossed aside a sack containing 93 baggies of crack cocaine and 101 glassines of heroin, according to the police report.

At the start of the hearing, Gallucio explains to Harris how the court functions. Under the new pretrial system, New Jersey operates on a presumption against detaining defendants before they are convicted. If a prosecutor objects to this freedom, the burden is on the state to convince the court that there is no reasonable way to ensure the defendant will show up for trial and won't commit further offenses if released.

Harris does have a history of drug violations and failure to appear in court, but it's an old history, and a nonviolent one. He's been out of trouble for the past decade; he is not currently on probation or parole. A points-based assessment scored Harris as fairly high-risk due to his past, but it still recommended he be released with regular monitoring. Ultimately, the judge agrees with the recommendation rather than the prosecutor. Harris will be freed prior to his trial, but he must call and personally visit the court's Pretrial Services office for monitoring, not commit any crimes, and stay away from his brother.

Judge Ernest Caposela, the courthouse's assignment judge, explains that prior to the reforms in New Jersey, about 12 percent of the pre-conviction jail population was stuck behind bars because of an inability to afford even \$250 in bail. Meanwhile, defendants that judges and prosecutors thought were truly dangerous had to be offered bail as well—and even very high bail amounts aren't a significant barrier to those with the right connections.

"We had a lot of problems with gangs putting up the money," he says, in cases of alleged violent crime. "Our goal is this: We keep the highest risk in jail. One of the things the public has not understood, and even the judges initially, is that this is not to let everyone out of jail. It's not 'get out of jail free.' It's to keep the most dangerous people in."

Not Just an Algorithm

Several floors down, employees of the Pretrial Services office work in cubicles, taking calls and checking in on those awaiting trial. They don't just passively wait to hear from defendants, explains John Harrison, criminal division manager for the courthouse. They will contact defendants to check on their status and make sure they're aware of pending court dates.

The pretrial services staff are also responsible for collecting the information and producing the risk assessments that judges use to help guide their decisions. Harrison shows off how the automated, algorithmic recommendations are put together. They use a Public Safety Assessment system pioneered by the Laura and John Arnold Foundation that—striving to be as objective as possible—puts a numerical rating on each defendant, based mostly on his or her history. It considers whether the person has previous convictions, whether the charges are for violent crimes, and how often he or

she has missed court dates both recently and in the past. The assessment doesn't take into consideration socioeconomic factors such as race, employment, zip codes, or anything else that isn't connected to the defendant's actual behavior. The one exception is age, and only because defendants under 20 statistically have an increased likelihood of missing court appearances.

With a few clicks, Harrison is able to run an assessment of a defendant scheduled to make his first appearance that afternoon. The computer measures him on two scales. One quantifies the risk that he'll commit new crimes while on release. The other quantifies the risk that he'll skip out on the court. Each is represented as a number from zero to six.

While the algorithm populates the numbers automatically, Harrison gets much more than just a couple of digits. The system also shows the information that led to the rankings. This defendant's risk factor has been elevated due to a previous conviction. Harrison is able to quickly see that the conviction was for misdemeanor joyriding. The prosecution and defense will see this information, too. A decision on whether he'll be kept in jail before his trial will not be based on just an algorithm spitting out a two or a five.

Prior to the reforms in New Jersey, about 12 percent of the pretrial jail population was stuck behind bars because of an inability to afford just \$250 in bail.

"Three years ago, these reports might not have been seen," Harrison explains, before a judge was asked to determine a defendant's release requirements. "They might not have had all the information." Without a risk assessment, judges tended to rely on bail schedules that give dollar amounts on the mere basis of the charges filed.

But does the new system work? On the most obvious level, yes: Fewer people are being kept behind bars. A report covering the first year of these reforms, submitted by the New Jersey Courts to the governor's office, noted that the state saw a 20 percent drop in pretrial detentions across 2017. All in all, there's been a 35 percent drop in the pretrial jail population dating back to 2015. Of the nearly 150,000 defendants charged with crimes in New Jersey last year, only 5.6 percent remained locked up prior to their trials.

This drop in detentions did not appear to result in a crime wave. A report released in March noted a small (2.7 percent) decline in the state in 2017. That's not out of line when compared to other nearby

states, according to statistics collected by the FBI. Crime throughout the Northeast generally declined last year.

When There's No Middle Ground

No matter where they might fall ideologically, those calling for bail reform consistently point fingers at one foe for the sad state of the status quo: bail bondsmen. The Civil Rights Corps' Karakatsanis bluntly calls the current pretrial situation "a wealth transfer from the poor to the bail industry."

Activist groups in some cities have developed nonprofit community bail funds to assist defendants in getting out without turning to bondsmen. A smartphone app called Appolition, launched last November, lets citizens donate directly from their bank accounts to help fund strangers' bail. But arguably the biggest cultural shift came in May, when Google and Facebook, partnering with several civil rights organizations and joined by representatives of Koch Industries, announced that they would no longer accept online advertisements from the private bail bond industry. (The Charles Koch Institute and the Laura and John Arnold Foundation support Reason Foundation, the nonprofit that publishes this magazine.)

A New Jersey commission in 2014 blasted the private bail system not just for leaving low-income nonviolent offenders stuck behind bars but also for corruption. Furthermore, it found, the whole bail industry operates on the idea that the bondsmen are taking a financial risk in covering the client's bail via "surety bonds"—but it turns out courts were not actually collecting most of the money these bonds promised when defendants skipped out. In 2013, the average settlement for forfeited bail amounted to 12.5 percent of what was owed. The bail companies were getting paid, but they were not risking nearly as much as people assume.

Representatives from the bail bond world have lobbied heavily and even filed suit to stop reforms in places like New Jersey and New Mexico that reduce the demand for cash bail. If these experiments spread, they could take out an entire industry that employs thousands and earns billions.

Jeff Clayton, executive director for the American Bail Coalition, has demanded data showing that New Jersey's shift is actually working. (The state will be releasing a report in the fall examining recidivism rates under the new system.) He also critiques the new either-or scenario in New Jersey: You're either free or you're detained, with almost no options for those kept locked up to post money and get out. "I think what New Jersey is going to prove is that giving them the power to detain with no bail is even more dangerous," he says.

Clayton notes that the request rate by prosecutors to hold defendants without bail varies from court to court. One in New Jersey detained a third of all defendants who were eligible for release in this system. Another jailed less than 10 percent.

Indeed, the reform was designed to give courts *more* power to detain people with no pretrial way out. It's one of the reasons then—Gov. Chris Christie called for changes. Previously, the state constitution required that arrestees be offered bail for anything other than a capital crime (and New Jersey no longer has capital punishment). Some 8,000 people were held until their trials in the state last year. Most of them would have previously been offered some sort of bail, even if they couldn't afford it.

"The defense of posting financial conditions for jail release is that it's a constitutional right," Clayton argues. "I think that's the tradition on this continent. Whether it *should* be required is up for debate."

Clayton and Karakatsanis couldn't be further apart on the use of cash bail, but interestingly, they both raise a similar specter: that when cash bail is eliminated, it could lead to increased rather than decreased jail detentions.

Caposela, the assignment judge, explains that New Jersey's pretrial changes came amid some other criminal justice reforms that pushed police officers to give summonses rather than seeking warrants—meaning fewer arrests in the first place. The court system also made significant changes intended to force speedier trials. Once somebody is arrested in the state, prosecutors have 90 days to indict him, and in most cases people must be tried within 180 days.

In other words, defendants in New Jersey who are kept in jail are not going languish for extended periods waiting for their trials. These bail reforms didn't happen in isolation; they included massive changes to the way the court system operates to improve its efficiency. They're not cheap, either—New Jersey's new system comes with a price tag of \$35 million for next year. But what if a court somewhere got rid of cash bail but also let prosecutors wait years before bringing jailed defendants to trial? What if it didn't or couldn't fund the pretrial services component of New Jersey's reforms?

There's also reason to fear that if judges are not given a proper framework for determining when to detain, they may be reluctant to consider letting even remotely risky people out, since public backlash could fall on them if something goes wrong.

In Maryland last year, judges were told to consider money bail as a final resort rather than as the default and to not hold defendants in detention solely because they couldn't afford the bail amounts. This ended up backfiring in Baltimore. Some local law students looked over the dockets and found

that defendants were being detained without any bail opportunity at all—even nonviolent defendants with no criminal history. Suddenly, pretrial detentions were going up, not down. In May, a local television station reported that even though arrests in Baltimore had declined compared to 2017, the number of people who were stuck in pretrial detention had increased 31 percent.

For the same reasons, Karakatsanis is watching California with some concern. Will the judges who previously refused to look at risk factors when setting bail for defendants like Bill Peyser simply resort to "widespread preventative detention" if cash bail ceases to be an option? He also worries about changes that might permit for-profit companies to take control of pretrial monitoring services and then shift costs over to defendants, by making them pay for their own monitoring even though they haven't been convicted of a crime. That already sometimes happens in places where the state runs the system; Georgia law currently allows judges to order defendants to cover the costs of pretrial electronic monitoring when such a measure is ordered as a condition of their release.

"If you care about the intrusion of the government on individual liberty," Karakatsanis says, "just getting rid of the cash bail system is great. But it sets up another fight."

Photo Credit: Joanna Andreasson

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Bail reform may to go the ballot

Enterprise report by Davis Harper Dec 5, 2018

Proponents of a referendum campaign to repeal bail reform legislation in California submitted a petition of nearly 600,000 signatures to elections officials last week, according to a Nov. 20 press release.

Senate Bill 10 – passed in August and set to go into effect in October of 2019 – would eliminate the California cash bail system for suspects awaiting trial and replace it with risk-assessment algorithms.

If certified, the referendum to repeal the widely criticized bill would be placed on the November 2020 general election ballot, and the law would not go into effect.

Californians Against the Reckless Bail Scheme – the coalition behind the initiative – had 90 days from the date the bill was passed (Aug. 28) to collect 365,880 valid signatures from registered California voters. The group, largely funded by Triton Management Services, Financial Casualty & Surety and Lexington National Insurance, consisted of public safety leaders, criminal justice reformers, crime victims' advocates, concerned citizens and bail industry leaders.

The coalition is sponsored by the American Bail Coalition (ABC), a trade organization "comprised of national bail insurance companies that are responsible for underwriting criminal bail bonds throughout the U.S" with the goal of protecting the "constitutional right to bail by working with local and state policymakers to bring best practices to the system of release from custody pending trial."

The Secretary of State certified Tuesday that enough counties have completed their signature counts to order a statewide random sample signature verification process, according to campaign manager Jeff Flint.

Each of California's 58 counties has 30 business days to verify and report how many valid signatures were submitted, Flint said.

SB 10 would eliminate 10 million to 15 million bail industry jobs, ABC Executive Director Jeff Clayton told the Enterprise in a phone interview, adding that the replacement risk-assessment system would be entirely based on the scores of an algorithm that is incorrect 30 percent to 40 percent of the time.

If a suspect were graded an unreasonable risk level given his or her criminal history and the severity of his or her crime, said suspect would have to hire a lawyer and a statistics expert to challenge that his or her risk score is not based on sound scientific evidence, Clayton said.

Clayton said that other states that have taken the algorithm-based risk-scoring approach saw jail populations boom as a result, referencing Maryland in particular.

If the referendum effort is successful and the bill is voted down, Clayton said the next step will be to reach a compromise with proponents of eliminating the cash bail system.

"If we stay the law and voters vote against it, we'll be right back where we were," Clayton said. "We would like to see a compromise system. If we're making a little less money, fine. Our hope is that a deal can be made and this fight doesn't go on for several years."

Over recent years, the ABC has proposed a number of alternatives to scrapping cash bail completely, including lowering or eliminating bail schedules, Clayton explained.

"Everybody believes improvements can be made," Clayton said, adding, "This is one of the worst bail reforms I've seen in my entire career."

Brenda Yeadon, owner of Jailbird Bail Bonds in Murphys, said that she is confident that the bill would be voted down if placed on the ballot.

"Obviously this is great news for the bail industry," Yeadon said of the signature initiative. "It is my opinion that with the choice now in the hands of California voters, the people will decide what is best for California regarding SB 10, and in their wisdom, I have every confidence that they will ensure the defendant's constitutional right to post bail by voting against such legislation."

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DETENTION, RELEASE FROM JAIL, AND COMPUTERIZED BAIL JUSTICE IN CALIFORNIA:

Is it 1984 All Over Again? What Can California Learn From the Last 30 Years of Bail Reform?

Jeffrey J. Clayton, Esq.*

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INTRODUCTION

As California and other states consider reforming the process of detention and release from jail, it is worth looking back on the last thirty years of bail reform, including what one commentator has called “the third generation of bail reform.”¹ The third generation of bail reform is not beginning, however. We are squarely in it. And, as this Article hopes to make clear, the arguments upon which the third generation of bail reform are premised, suffer from the same infirmities as previous generations of bail reform. The goal of reform is to reduce jail populations while simultaneously reducing failures to appear in court and arrests for new crimes while on bail. Proposed reforms seem unlikely to achieve those goals without significant costs.

The current bail reform movement principally relies on computerized risk algorithms that purport to predict human behavior. Those algorithms, however, raise serious questions about the efficacy of the systems that rely upon them and ultimately how they affect the rights of defendants, including questions of protected-class discrimination. Civil libertarians ought to be concerned that bail reform will use computers to sort persons into rights-trammeling categories, with the higher the computer risk score, the more the trammeling. Bail is the right of a presumptively innocent person to be free from jail pending trial, not the right to be labeled as risky and therefore subjected to intrusive conditions assigned by what purports to be an evidence-based, scientific computer algorithm, but in the end is merely based on value-based judgments often hidden and insulated from public view.

I. Reformed Jurisdictions (Federal, Kentucky, and New Jersey), and the California Reform Plans That Use Them as a Model

Proponents of bail reform tend to advocate for a no-money bail system where an accused is detained based on risk and released based on the absence of risk. Thus, a risk assessment is used to determine whether the accused, if released, is likely to commit a new crime (including witness intimidation) and is likely to appear in court. Preventative detention (along with other holds as permitted by law, *e.g.*, probation holds, parole holds, etc.) would serve as the only mechanism to keep an accused in jail pretrial. Today, if a defendant cannot secure release from jail by posting the applicable bail bond, the defendant remains in jail awaiting trial.² Assessing whether an accused is or is not “risky” is obviously not

1. Timothy R. Schnacke et al., *The Third Generation of Bail Reform*, DLR ONLINE (Mar. 14, 2011), <http://www.denverlawreview.org/dlr-onlinearticle/2011/3/14/the-third-generation-of-bail-reform.html> [<https://perma.cc/35A8-U9VG>].
2. This is a key legal question in the bail reform debate and is the subject of a series of lawsuits. Advocates for bail reform argue that a defendant who does not post bail ought to be presumed to be unable to “afford” bail. Therefore, imposing financial conditions of bail impermissibly discriminates against indigent defendants in violation of the equal protection clause. Four judges have applied three levels of review under the Equal Protection Clause analysis—rational basis,

a question of science, although that is precisely what is being proposed: using big data to predict human behavior. One official in New Jersey even described such a system as being no different than an application on a smart phone.

In federal court, financial conditions of release are rarely used and bail bond agents seldom post bonds for defendants.³ Although financial conditions were widely used in the federal bail system prior to the Bail Reform Act of 1984, the act expanded the power of preventative detention and applied a rebuttable presumption of detention for certain offenses (primarily violent crimes and felony drug offenses).⁴ The government must therefore prove, by clear-and-convincing evidence, that the defendant poses a risk of flight or is a danger to the community and that no conditions of bail are sufficient to protect the community from such risk.⁵ In order to meet this standard, the federal system utilizes local

intermediate scrutiny, and strict scrutiny. Two such cases are currently pending before the United States Court of Appeals for the Fifth and Eleventh Circuits (*O'Donnell v. Harris County, Texas* and *Walker v. Calhoun, Georgia*), and two more are working their way up to the United States Court of Appeals for the Ninth Circuit. The counterargument is that the excessive bail prohibition of the Eighth Amendment governs the constitutionality of bail when a defendant does not post bond. Thus, the mere fact that a bail is not posted, does not automatically render it excessive. In California, the simple inability to procure a bail bond has never been the dispositive factor. As the California Supreme Court noted in 1879:

The able counsel for the prisoner, who has exhausted every means that ingenuity and learning could suggest for the relief of his client, argues that the mere fact that the prisoner is unable to procure the bail demanded of him shows that it is excessive in amount, and should therefore be reduced. But I am unable to assent to that proposition. Undoubtedly the extent of the pecuniary ability of a prisoner to furnish bail is a circumstance among other circumstances to be considered in fixing the amount in which it is to be required, but it is not in itself controlling. If the position of the counsel were correct, then the fact that the prisoner had no means of his own, and no friends who were able or willing to become sureties for him, even in the smallest sum, would constitute a case of excessive bail, and would entitle him to go at large upon his own recognizance.

Ex Parte Duncan, 54 Cal. 75, 77–78 (Cal. 1879).

3. The federal system does not generally require a secured bond, meaning when financial conditions of bail are imposed they are typically an unsecured promise to forfeit a certain amount of money (which, incidentally, does not serve to detain since defendants simply sign it). See U.S. DEP'T OF JUSTICE, OFFICE OF THE U.S. ATT'YS, RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS (18 U.S.C. 3141 ET SEQ.), <https://www.justice.gov/usam/criminal-resource-manual-26-release-and-detention-pending-judicial-proceedings-18-usc-3141-et> [<https://perma.cc/JTT4-VEH5>] (last visited Apr. 18, 2018). In state courts, a release without a requirement to post financial security is often known as a “recognizance bond” or a “signature bond.”]
4. 18 U.S.C. § 3142 (2008).
5. According to the U.S. Attorneys' Manual, “[i]n a pretrial detention hearing, the government's burden is to establish by clear and convincing evidence that no conditions of release will reasonably assure the safety of the community The

pretrial services programs, which are part of the federal court system and rely on pretrial service officers to investigate the criminal histories of defendants awaiting trial, interview such defendants, gather and verify information concerning the defendants, and ultimately issue a report and recommendation to the judicial officer setting bail.⁶ Pretrial service officers will also supervise defendants if they are released pretrial to ensure compliance with any conditions imposed, including house arrest, GPS monitoring, maintaining employment, and regular drug testing.

Although Kentucky is not a no-money bail state, the state has made numerous efforts to take money out of the bail and the system it now uses is widely viewed as evidence that a no-money bail system can work.⁷ As such, it has served as model for California Senate Bill 10,⁸ which is currently pending before the California legislature. Kentucky has come to serve as an example for the bail reform movement in part because there are no private bail agents in Kentucky.⁹ Rather, bail is posted in cash and there are no surety bail agents who bring defendants to court either within Kentucky or from foreign jurisdictions.¹⁰ Kentucky utilizes a statewide pretrial services program that administers a risk assessment tool and supervises defendants. Specifically, Kentucky uses the Public Safety Assessment risk assessment tool created by the Laura and John Arnold Foundation¹¹ to assess the risk of defendants for purposes of bail.

In 2014, voters in New Jersey amended the state's constitution to change its bail system to model the federal system. This change makes all persons eligible for pretrial release "with or without posting bail, depending upon the decision of the court."¹² While it is not clear that the

issue in such a hearing is whether releasing a defendant would pose a danger to the community that would not exist were [the defendant] detained." U.S. DEP'T OF JUSTICE, OFFICE OF THE U.S. ATT'YS, *supra* note 3 (citation omitted).

6. *Id.*

7. See Alysia Santo, *Kentucky's Protracted Struggle to Get Rid of Bail*, MARSHALL PROJECT (Nov. 12, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/11/12/kentucky-s-protracted-struggle-to-get-rid-of-bail> [<https://perma.cc/7XY2-YZY4>].

8. *To Fix "Unfair" Bail System, Will California Copy Kentucky?*, L.A. DAILY NEWS (Aug. 13, 2017, 4:00 PM, updated Aug. 28, 2017, 5:37 AM), <https://www.dailynews.com/2017/08/13/to-fix-unfair-bail-system-will-california-copy-kentucky> [<https://perma.cc/MVC6-JHJK>].

9. *Frequently Asked Questions*, KY. CT. JUSTICE, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/FAQs.aspx> [<https://perma.cc/7FRA-KAC3>] (last visited Feb. 12, 2018).

10. *Pretrial Services*, KY. CT. JUSTICE, <https://courts.ky.gov/courtprograms/pretrialservices/Pages/interviewrelease.aspx> [perma.cc/W5PE-JH3L] (last visited Mar. 10, 2018).

11. *Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD FOUNDATION, <http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf> [<https://perma.cc/7VGA-JW36>] (last visited Apr. 18, 2018).

12. *New Jersey Pretrial Detention Amendment, Public Question No. 1 (2014)*, BALLOTEDIA, [https://ballotpedia.org/New_Jersey_Pretrial_Detention_Amendment,_Public_Question_No._1_\(2014\)](https://ballotpedia.org/New_Jersey_Pretrial_Detention_Amendment,_Public_Question_No._1_(2014)) [<https://perma.cc/CZ2U-6ZGK>] (last

legislative proposal intended to eliminate all financial conditions of bail¹³ that was the result.¹⁴ New Jersey has now implemented a version of the federal system, where preventative detention functions as the only barrier to release from jail. Accordingly, bail has essentially been put behind the emergency glass like a fire alarm that is only to be used as a last resort.¹⁵ New Jersey is also using the Public Safety Assessment tool to assess risk and to recommend detention or release.¹⁶

Building on these reforms, in October 2017, the California Pretrial Detention Reform Workgroup of the California Judicial Council issued

visited Feb. 12, 2018).

13. The constitutional amendment allows a court to deny pretrial release “if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person’s appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process.” *Id.* That language contemplates that judges would have the option to impose financial conditions of release when making bail decisions. The decision to implement the federal system in favor of general elimination of financial conditions of bail and bail agents was based on a combination of the Public Safety Assessment tool, court rules, and Attorney General directives, all of which have restricted judicial discretion. There is pending legislation, however, that would restore discretion to set bail. That bill authorizes judges to preventatively detain defendants in accordance with the constitutional amendment, but authorizes judges to impose “any combination of monetary bail and non-monetary conditions” that would achieve the purpose of bail when preventative detention is not imposed. Restoring Judicial Discretion in Bail Setting Act, A. 2806, 218th Leg. (N.J. 2018). The New Jersey Association of Counties opposed the constitutional amendment because it anticipated that counties would bear a large increase in the cost of supervising all of the defendants blanketed with conditions by judges who were obliged to release defendants if they did not impose preventative detention. The Chris Christie Administration dodged the objection by persuading a political court called the Council on Unfunded Mandates to reject the Association’s claim that bail reform constituted an unfunded mandate, concluding that there was no proof that bail reform would cause significant financial hardship to counties. See Maddie Hanna, *N.J. Rethinks Bail—Who Gets Out, Who Stays Jailed*, THE INQUIRER (Jan. 1, 2017, 11:59 PM), http://www.philly.com/philly/news/local/20170101_N_J_rethinks_bail_-_who_gets_out_who_stays_jailed.html [<https://perma.cc/2L5H-NANF>]. Accordingly, local governments must bear the costs of supervision, which as of this writing are still unfunded but somehow constitutionally required.
14. See Joe Hernandez, *It’s Been One Year since New Jersey Ditched Cash Bail. Here’s How It’s Going*, WHYY (Dec. 26, 2017), <https://whyy.org/segments/one-year-since-n-j-ditched-cash-bail-heres-going> [<https://perma.cc/6HD3-NG76>].
15. See Reply Brief in Support of Motion for Preliminary Injunction at 11, Holland v. Rosen, No. 1:17-cv-04317-JBS-KMW (D.N.J. Aug. 7, 2017) (“The New Jersey system alone puts bail behind the break-only-in-an-emergency glass and categorically denies bail whenever other options—including serious pretrial deprivations like ankle bracelets—are feasible.”).
16. Ephrat Livni, *In the US, Some Criminal Court Judges Now Use Algorithms to Guide Decisions on Bail*, QUARTZ (Feb. 28, 2017), <https://qz.com/920196/criminal-court-judges-in-new-jersey-now-use-algorithms-to-guide-decisions-on-bail> [<https://perma.cc/N6VG-LN6D>].

recommendations to the Chief Justice.¹⁷ The Workgroup did not hide the fact that it was recommending a move toward the federal and New Jersey systems. In fact, the report recommended that California “implement a robust risk-based pretrial assessment and supervision system to *replace the current monetary bail system*.”¹⁸ Of course, that recommendation anticipated an expansion of preventative detention, which the report notes in the second recommendation.¹⁹

The report does stop short of calling for a change to the California Constitution. It attempts to skirt the issue by arguing that California allows for consideration of public safety in the setting of bail²⁰ and therefore the California Constitution would not need to be changed in order to implement a no-money bail system. That analysis is difficult to square with the language of the California Constitution, which provides that persons “shall be released on bail by sufficient sureties,” subject to certain exceptions including:

- capital offenses;
- violent felonies and felony sexual assaults if “the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others”; and
- other felonies when “the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.”²¹

Even when an exception potentially applies, release may be denied only when “the facts are evident or the presumption great.”²² In contrast to the requirement that defendants “shall be released on bail by sufficient sureties” unless an exception applies, the California Constitution also provides that a defendant “may be released on his or her own recognition in the court’s discretion.”²³

It is difficult to see how a no-money bail system that makes release contingent on risk rather than the severity of the charged crime would be consistent with the state’s constitutional directive that, except in limited instances, defendants “shall be released on bail by sufficient sureties.” When comparing California’s constitution to New Jersey’s, it seems apparent that to truly implement the no-money bail system recommended

17. PRETRIAL DETENTION REFORM WORKGROUP, PRETRIAL DETENTION REFORM: RECOMMENDATIONS TO THE CHIEF JUSTICE (2017), <http://www.courts.ca.gov/documents/PDRReport-20171023.pdf> [<https://perma.cc/L7TM-VGV8>].

18. *Id.* at 2 (emphasis added).

19. *Id.*

20. *Id.* at 20.

21. CAL. CONST. art. I, § 12.

22. *Id.*

23. *Id.* Excessive bail is also prohibited. Bail decisions must take into account the seriousness of the charged crime, the defendant’s criminal record, and the risk of the defendant’s nonappearance for future proceedings. *Id.*

by the Workgroup, California would need to amend its constitution by adopting language similar to New Jersey's constitutional amendment.²⁴

California Senate Bill 10, sponsored by Senator Robert Hertzberg and Assemblyman Rob Bonta, is another proposal to reform California's bail system. Senate Bill 10, unlike the Workgroup report, does not call for expanded preventative detention although it does include many features of a risk-based system, such as imposing a risk assessment for all but violent felonies, creating a pretrial services program in each of California's fifty-eight counties, and generally allowing release without financial bail conditions for all felonies and misdemeanors except for specified crimes.²⁵ Importantly, judges would be given wide latitude to impose nonmonetary conditions of bail, which could include supervision, rides to court, drug screening, GPS monitoring, and house arrest, all of which would be paid either by the defendant or a county program in the event that a defendant could not afford them.

II. Changing California's Constitution to Expand Preventative Detention—From Unconstitutional and Ineffective Policy to a Now Desirable General Crime Control Policy

Bail reformers, who are advocating for a shift to the federal bail system, often quote *United States v. Salerno* for the proposition that in our country "liberty is the norm" and detention the carefully limited exception.²⁶ Every time I hear a call for states to go the federal bail system

24. New Jersey originally allowed detention without bail only in capital cases if the proof was evident or the presumption great. That language was deleted from the constitution and replaced with language stating that the pretrial release of a person may be denied where "no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process." A. Con. Res. 2806, 218th Leg. (N.J. 2018).
25. The specified crimes include serious felonies, violent felonies, felony witness intimidation, spousal rape, domestic violence, stalking, violation of protective orders, or any felony allegedly committed while the person was on pretrial release for a separate offense. See *Assembly Comm. on Public Safety*, S.B. 10, 2017–2018 Leg., (Cal. 2017), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB10# [<https://perma.cc/KCF9-XASF>].
26. *United States v. Salerno*, 481 U.S. 739, 755 (1987). The majority in *Salerno* rather dismissively determined that the Eighth Amendment prohibition against excessive bail does not prohibit preventative detention because the Amendment "says nothing about whether bail shall be available at all." *Id.* at 752. Justice Marshall's dissenting opinion castigated the majority's reasoning:

If excessive bail is imposed the defendant stays in jail. The same result is achieved if bail is denied altogether It would be mere sophistry to suggest that the Eighth Amendment protects against the former decision, and not the latter. Indeed, such a result would lead to the conclusion that there was no need for Congress to pass a preventive detention measure of any kind; every federal magistrate and district judge could simply refuse, despite the absence of any evidence of risk

and have this quote spewed at me yet again, I cringe knowing how wrong Justice Rehnquist turned out to be.

Preventative detention—the detention of a defendant who is considered a flight risk or danger to the community—was not generally thought to be constitutional in this country prior to 1970,²⁷ when the District of Columbia first began implementing a no-money bail system.²⁸ In fact, various civil liberties groups opposed the 1984 federal Bail Reform Act provisions regarding preventative detention and claimed in *Salerno* that preventative detention was inconsistent with the federal constitution.²⁹ Chief Justice Rehnquist, writing for the majority, held that the government could detain a criminal defendant without setting bail—in this case, the under-boss and speculated “front boss” Anthony “Fat Tony” Salerno of the Genovese crime family³⁰—if the government proved by clear and convincing evidence that the defendant posed a danger or flight risk,³¹ subject to the other procedural and substantive protections contained in the act.³²

of flight or danger to the community, to set bail. This would be entirely constitutional, since, according to the majority, the Eighth Amendment “says nothing about whether bail shall be available at all.”

Id. at 760–61 (Marshall, J., dissenting).

27. See generally, TIMOTHY SCHNACKE ET AL., THE HISTORY OF BAIL AND PRETRIAL RELEASE (Sept. 24, 2010), <https://www.pretrial.org/download/pji-reports/PJI-History%20of%20Bail%20Revised.pdf> [<https://perma.cc/LD37-XYSD>] (discussing history of bail and preventative detention).
28. District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91–358, 84 Stat. 473 (1970).
29. *Amici* briefs were in fact filed by the ACLU, American Bar Association, and National Association of Criminal Defense Lawyers, among others, in support of *Salerno*. See *United States v. Salerno*, PROCON.ORG (Dec. 30, 2009, 8:33 AM), <https://aclu.procon.org/view.resource.php?resourceID=002489> [<https://perma.cc/H7TT-24E8>] (listing amici).
30. *Anthony Salerno*, WIKIPEDIA, https://en.wikipedia.org/wiki/Anthony_Salerno [<https://perma.cc/X3FX-BBXQ>] (last visited Feb. 13, 2018).
31. *United States v. Salerno*, 481 U.S. 739 (1987). Interestingly, in a paper published for the Federal Judicial Center on the Bail Reform Act of 1984, David N. Adair, Jr. suggests that the standard for preventative detention for dangerousness is clear and convincing evidence, but that since the U.S. Code is silent on the standard for risk of flight cases, the burden of proof is only a preponderance of the evidence in-flight only cases, and cites a number of cases for that proposition. DAVID N. ADAIR, JR., THE BAIL REFORM ACT OF 1984 8 (3d ed. 2006), <https://www.fjc.gov/sites/default/files/2012/BailAct3.pdf> [<https://perma.cc/4FS4-9FY3>].
32. *United States v. Salerno*, 481 U.S. 739, 755 (1987). The safeguards include the following: (1) detention is limited to only “the most serious of crimes;” (2) the arrestee was entitled to a prompt hearing with stringent speedy trial time limitations; (3) detainees were to be housed separately from those serving sentences or awaiting appeals; (4) a “fullblown adversary hearing,” which required the government to convince a neutral decision maker by clear and convincing evidence that no condition or combination of conditions of release would reasonably assure court appearance or the safety of the community or any person; (5) detainees had a right to counsel and could testify or present information and cross-examine witnesses at the hearing; (6) judges were guided by statutorily

The arguments for preventative detention are quite simple. It begins with the assumption that we can scientifically sort people into two categories—risky and not as risky—and then detain the risky while releasing the not as risky on conditions of bail. Many a reformer has said that the goal is to keep the right people in jail.³³ Rich gangsters, like “Fat Tony” Salerno, will always be able to post bail, so financial conditions of bail inherently discriminate on the basis of wealth. By basing detention decisions on risk however, the judicial system can reduce crime because judges will detain the dangerous offenders, who might otherwise be released due to their ability to post bail. Other commentators argue that it is intellectually dishonest to impose *de facto* preventative detention by setting higher bail than an offender can reasonably be expected to post. Preventative detention is also seen as more fair to the indigent because their inability to post financial bonds will not serve as grounds for detention (although typically bail is a third-party provided benefit, and the indigent, like their rich counterparts, will still face aggressive preventative detention policies based on risk assessments). Well-intentioned challengers of state overreaches, like charitable bail funds or other community groups, would be powerless to take responsibility as the jailer of choice for the defendant.³⁴ Of course, proponents of bail reform also argue that ending money bail is necessary to end mass incarceration in the United States,³⁵ generally without acknowledging that pretrial detention of federal defendants increased after Congress passed the Bail Reform Act.³⁶

enumerated factors; (7) judges were to include written findings of fact and a statement of reasons for a decision to detain; and (8) detention decisions were subject to immediate appellate review. See TIMOTHY R. SCHNACKE, *FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM* 29 (2014), <https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf> [<https://perma.cc/5K7H-MCSL>].

33. *Editorial: Keeping the Right People in Jail*, BULLETIN (June 6, 2014, 12:01 AM), <http://www.bendbulletin.com/home/2136314-151/editorial-keeping-the-right-people-in-jail> [<https://perma.cc/2PW7-FY3W>].

34. The U.S. Supreme Court defines release on a bail bond as being released to the custody of the surety, which in the modern day can be a third-party or a private bail agent. Of course, this has to be a choice by both the defendant and the surety, and in that way it has been said to be the right to select the jailer of one's choice. “When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment.” *Taylor v. Taintor*, 83 U.S. 366, 371 (1872).

35. See e.g., Udi Ofer, *We Can't End Mass Incarceration Without Ending Money Bail*, ACLU (Dec. 11, 2017, 4:30 PM), <https://www.aclu.org/blog/mass-incarceration/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail> [<https://perma.cc/BP6J-7PBN>].

36. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *PRETRIAL RELEASE AND DETENTION: THE BAIL REFORM ACT OF 1984* 1 (1988), <https://www.bjs.gov/content/pub/pdf/prd-bra84.pdf> [<https://perma.cc/2AQ5-MHVK>] (“The percent of Federal defendants held for the entire time prior to trial, either on pretrial detention or for failure to make bail, increased from 24% before the Act to 29% after the Act.”). Rates of detention escalated dramatically in the years that followed.

The arguments against preventative detention are well articulated in a pre-*Salerno* article, *Preventive Detention: A Constitutional But Ineffective Means of Fighting Pretrial Crime*.³⁷ The article notes that even with the most vigorous due process and risk assessment instruments available, the rate of false positives range from forty to fifty percent in one study to as high as 88 percent in another.³⁸ A false positive occurs when a prediction of dangerousness results in detention, when in fact, the person would not have committed a new crime if released. In addition, from a resources perspective, preventative detention hearings are expensive because they require proof by clear and convincing evidence and trigger a litany of safeguards. Finally, those who oppose the expansion of preventative detention typically argue that we cannot predict risk with sufficient certainty to be sure that we are detaining the right people. In his dissent in *Salerno*, Justice Blackmun argued that even our most highly trained professionals cannot predict risk. This squared with the position of the American Psychiatric Association that even psychiatrists are unable to make accurate predictions of long-term future criminality.³⁹

Justice Thurgood Marshall's dissent in *Salerno* makes the argument that preventative detention erodes civil rights and is inconsistent with American constitutional tradition:

This case brings before the Court for the first time a statute in which Congress declares that a person innocent of any crime may be jailed indefinitely, pending the trial of allegations which are legally presumed to be untrue, if the Government shows to the satisfaction of a judge that the accused is likely to commit crimes, unrelated to the pending charges, at any time in the future. Such statutes, consistent with the usages of tyranny and the excesses of what bitter experience teaches us to call the police state, have long been thought incompatible with the fundamental human rights protected by our Constitution. Today a majority of this Court holds otherwise. Its decision disregards basic principles of justice established centuries ago and enshrined beyond the reach of governmental interference in the Bill of Rights.⁴⁰

Justice Marshall predicted the future as he concluded his dissent:

Honoring the presumption of innocence is often difficult; sometimes we must pay substantial social costs as a result of our commitment to the values we espouse. But at the end of the day,

See note 45 *infra* and accompanying text.

37. Scott D. Himsell, *Preventive Detention: A Constitutional But Ineffective Means of Fighting Crime*, 77 J. CRIM. L. & CRIMINOLOGY 439 (1986).

38. *Id.* at 455 n.127.

39. See *Barefoot v. Estelle*, 463 U.S. 880, 920 (1983) (Blackmun, J., dissenting) ("The American Psychiatric Association (APA), participating in this case as *amicus curiae*, informs us that '[t]he unreliability of psychiatric predictions of long-term future dangerousness is by now an established fact within the profession.' . . . The APA's best estimate is that *two out of three* predictions of long-term future violence made by psychiatrists are wrong.").

40. *United States v. Salerno*, 481 U.S. 739, 755-756 (1986) (Marshall, J., dissenting).

the presumption of innocence protects the innocent; the shortcuts we take with those whom we believe to be guilty injure only those wrongfully accused and, ultimately, ourselves.

Throughout the world today, there are men, women, and children interned indefinitely, awaiting trials which may never come or which may be a mockery of the word, because their governments believe them to be “dangerous.” Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of such unchecked power. Over 200 years it has slowly, through our efforts, grown more durable, more expansive, and more just. But it cannot protect us if we lack the courage, and the self-restraint, to protect ourselves. Today a majority of the Court applies itself to an ominous exercise in demolition. *Theirs is truly a decision which will go forth without authority, and come back without respect.*⁴¹

Justice Marshall’s forecast has come true. Governments have abused and misapplied the power of preventative detention since they obtained it.⁴² Denying individuals a right to bail is now a central cause of mass incarceration in the federal system.

In 1983, prior to the passage of the Bail Reform Act, the federal government detained 24 percent of persons prior to trial, primarily because they were unable to post bail.⁴³ Only about two percent of defendants were held without bail.⁴⁴ Justice Marshall’s prediction came true. A 2015 study determined that 72.7 percent of all defendants in the federal system were detained prior to trial.⁴⁵ This represents a 303 percent increase in the rate of preventative detention since the Bail Reform Act went into effect.

It should be pointed out, however that the rate of preventative detention is extremely variable, depending upon the jurisdiction. Federal Public Defender Jeffrey A. Aaron, who published an article in the *San Francisco Daily*, which is not available online and cannot be

41. *Id.* at 767 (emphasis added).

42. Pretrial incarceration is not the only example of preventative detention based on predictions of future misconduct. Many states have enacted laws that detain sex offenders for indefinite periods after they complete their sentences based on predictions that the offenders will be unable to control their criminal impulses and will thus commit new sex crimes if released. The Supreme Court has rejected constitutional challenges to such laws. *See e.g.*, *Kansas v. Hendricks*, 521 U.S. 346 (1997) (upholding Kansas’ Sexually Violent Predator Act); *Kansas v. Crane*, 534 U.S. 407 (2002) (indefinite detention permitted even if lack of self-control results from personality or emotional disorder rather than volitional impairment).

43. U.S. DEP’T OF JUSTICE, *supra* note 36, at 1.

44. *Id.*

45. *Table H-14: U.S. District Courts—Pretrial Services Release and Detention for the 12-Month Period Ending September 30, 2015*, U.S. COURTS I (2015), http://www.uscourts.gov/sites/default/files/data_tables/H14Sep15.pdf [<https://perma.cc/HGE8-GEPA>]. The percentage of defendants detained varies significantly by Circuit. The Ninth Circuit had the highest rate of detention, at 85.5 percent, while the Third Circuit had the lowest rate of detention, at 46.7 percent. *Id.*

redistributed,⁴⁶ has noted that the preventative detention statistics are available on the U.S. Courts' webpage. He notes that the disparities in detention rates are highly variable and not easily explainable. He gives the District of New Jersey as one example, with 36 percent detained, and compares that detention rate to Maine (63.2 percent), Delaware (65 percent) and Arizona (95.1 percent).

New Jersey's experiment with preventative detention appears to be trending in a similar direction as the federal experiment. While statistics prior to the law's passage are not readily available, the latest statistics on preventative detention indicate that prosecutors are filing detention motions in 43.67 percent of cases, and are succeeding a little less than half of the time with approximately 18 percent of all defendants detained.⁴⁷ Of course, if no resources are provided for preventative detention, then judges will be less likely to order it. This has been the case in New Mexico's Bernalillo County, where detention motions are filed in less than fifteen percent of eligible felony cases and detention is obtained in less than five percent of cases.⁴⁸ The New Jersey data also shows that the trend in jail population reductions has slowed slightly under bail reform. In 2016, the year before bail reform was implemented, the non-sentenced pretrial jail population declined by 20.68 percent, while in 2017, the first full year of bail reform, the non-sentenced pretrial population declined by 19.5 percent.⁴⁹

Upon further review, in the no-money bail system, *detention becomes the norm*, or at least may threaten to become the norm. The collective distaste for the constitutional right to bail by sufficient financial sureties, combined with collective fear that presumptively innocent defendants will commit crimes if released, has convinced the public that the problem of mass incarceration can be solved by giving the government the power to detain with no bail. The decision to implement a risk-based preventative detention system in the federal system is one that, in the words of Justice Marshall, came forth "without authority" and will go back "without respect."⁵⁰ It is not clear that the results would be any different in California, although success would certainly depend on funding, which has proven to be quite expensive.

46. Jeffrey Aaron, *Do As DOJ Says, Not As It Does*, SAN FRANCISCO DAILY J. (2017) (on-file with the author).

47. *Criminal Justice Reform Data*, N.J. COURTS I (2018), <https://www.judiciary.state.nj.us/courts/assets/criminal/cjrreport.pdf> [<https://perma.cc/2G8K-GXX6>].

48. Susan Montoya Bryan, *New Mexico District Attorneys Push for Changes to Bail Rules*, LAS CRUCES SUN NEWS (Sept. 28, 2017, 4:42 PM, updated Sept. 29, 2017, 10:29 AM), <http://www.lcsun-news.com/story/news/local/new-mexico/2017/09/28/new-mexico-district-attorneys-push-changes-bail-rules/714831001> [<https://perma.cc/3NNS-RYDF>].

49. *Criminal Justice Reform Data*, *supra* note 47, at 5.

50. *United States v. Salerno*, 481 U.S. 739, 767 (1986) (Marshall, J., dissenting).

III. Reforming the Bail and Criminal Justice System by Using Computers to Predict Risk and Recommend Outcomes—Criticisms and Safeguards

The central component underlying the proposed reforms discussed above is utilizing computer science to perform risk assessment. For more than a generation, courts, practitioners, and others have rejected the accuracy of these dangerously unreliable predictions. For example, research has shown that, “[t]he accuracy with which clinical judgment predicts future events is often little better than random chance. The accumulated research literature indicates that errors in predicting dangerousness range from 54% to 94%, averaging about 80%.”⁵¹ The U.S. Supreme Court has also appeared to endorse the view of the American Psychiatric Association that, “predictions as to whether a person would or would not commit violent acts in the future are ‘fundamentally of very low reliability’ and that psychiatrists possess no special qualifications for making such forecasts.”⁵²

Risk assessment legislation is currently underway in several states.⁵³ Senate Bill 10 in California is one example of such legislation. This follows proposed legislation and court rules newly implemented in as many as fifteen states over the last twelve months. The most popular risk assessment—the Public Safety Assessment (PSA)—developed by the Laura and John Arnold Foundation, is now used in as many as thirty-eight jurisdictions, including three states (New Jersey, Kentucky, and Arizona).⁵⁴ And most bail reform legislation at both the state and local level either requires the use of risk assessments prior to setting bail, or at a minimum encourages and permits the use of such assessments by adding it to the existing statutory factors for setting bail.

This Part examines several key issues that have been raised regarding the use of risk assessments including: (a) legal issues, (b) questions of

51. Terence W. Campbell, *Challenging Psychologists and Psychiatrists as Expert Witnesses*, 73 MICH. B.J. 68, 68 (1994).

52. *Estelle v. Smith*, 451 U.S. 454, 472 (1981).

53. See, e.g., S.B. 1490, 2018 Reg. Session (Fla. 2018) (the amended version from February 6, 2018 <https://www.flsenate.gov/Session/Bill/2018/1490/Amendment/648186/HTML>, that legislation created a presumption against secured bail and implemented a risk assessment regime. From the legislative declaration. “The Legislature finds that the use of actuarial instruments that evaluate criminogenic based needs and classify defendants according to levels of risk provides a more consistent and accurate assessment of a defendant’s risk of noncompliance while on pretrial release pending trial.”); H.B. 439, 132d Gen. Assemb., Reg. Sess. (Ohio 2017) (Ohio H.B. 439 would have required the Ohio Sentencing Commission to approve and issue a list of validated risk instruments for use in the pretrial context within 90 days of the legislation becoming law).

54. Robert Brauneis & Ellen P. Goodman, *Algorithmic Transparency for the Smart City*, 20 YALE J.L. & TECH. 103, 137 (2018); See also *Pretrial Justice*, LAURA AND JOHN ARNOLD FOUNDATION, <http://www.arnoldfoundation.org/initiative/criminal-justice/pretrial-justice> [<https://perma.cc/HEJ8-Z949>] (last visited Apr. 19, 2018) (noting that [o]ver 40 jurisdictions have either adopted the PSA or are engaged in implementation).

transparency and black-box algorithms, (c) potential for discrimination, (d) separation of powers issues, and (e) ethical and moral questions.

A. *Legal Issues—Pretrial Risk Assessments*

One of the motivations underlying bail reform is that a criminal defendant's presumption of innocence, which has no direct application at the pretrial phase of a criminal case,⁵⁵ is lost when a criminal defendant is required to post money bail. Yet, risk assessments in practice must be more antithetical to the presumption of innocence than bail.⁵⁶ Risk assessments classify people based on what they have done in the past and are not based on what they are accused of doing in a present action. In fact, many risk assessments do not consider the current charge in making the assessment. Although critics claim that a bail schedule based on the charge is fundamentally unfair, in reality, judges typically assign higher bail, more liberty-restricting conditions, and—in the case of the federal government and Washington, D.C.—preventative detention on the basis of two unrelated factors: the defendant's age and how many prior convictions or breaches of bail conditions they have in their past.⁵⁷

The National Legal Aid and Defender Association (NLADA) has noted several key legal issues with the use of risk assessments.⁵⁸ First, are safeguards against self-incrimination.⁵⁹ Because many risk assessments

55. *Bell v. Wolfish*, 441 U.S. 520, 533 (1979) (“‘The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.’ But it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.”) (citation omitted). This is a relatively recent understanding of the presumption of innocence. “At common law, the presumption of innocence had a wider meaning. It also protected defendants during the time between charge and conviction, ensuring that most individuals would remain at liberty prior to trial . . .” RAM SUBRAMANIAN ET AL., *VERA INST. OF JUST., INCARCERATION’S FRONT DOOR: THE MISUSE OF JAILS IN AMERICA* 48 n.4 (2015).

56. “Moreover, the threat of an unwarranted restraint on an individual’s liberty is at its greatest where the decision being made is predictive in nature. To deprive an individual of his freedom on the basis of speculation about his future conduct is contrary to the presumption of innocence that ‘lies at the foundation’ of our judicial system. Such decision making is also peculiarly subject to abuse and threatens to undermine the respect and confidence of the community in the uniform application of the criminal law. *Van Atta v. Scott*, 613 P.2d 210, 218 (1980) (citation omitted).

57. *See supra* note 11 (While there are nine factors, eight are prior convictions (including whether or not served in prison) and then age. The other risk assessments are not so heavily reliant on these two factors. However, these two categories, age and prior criminality and failures as an umbrella category, are the two general reasons why scores go up. In Colorado, roughly 62 percent of the total score is based on these two umbrella categories.); *infra* note 98.

58. *See generally* NAT’L LEGAL AID & DEFENDER ASS’N, *RISK & NEEDS ASSESSMENTS: WHAT DEFENDERS AND CHIEF DEFENDERS NEED TO KNOW* (2015), http://www.nlada.org/sites/default/files/pictures/NLADA_Risk_and_Needs_Assessments-What_Public_Defenders_Need_to_Know.pdf [<https://perma.cc/4G2S-MYJ3>].

59. *Id.* at 4–5.

require an interview, individual's Fifth Amendment rights against self-incrimination are implicated. This is almost impossible to avoid because many legislative proposals assume that *all* defendants will be required to submit to a risk assessment. An assessment report cannot be completed without an interview because the data required to complete the assessment is generally not available to government agencies, such as an individual's, history of mental health issues.

Second, the NLADA report notes that, "[u]se of an assessment instrument which has not been validated to make decisions impacting a defendant's liberty may violate due process or, if used at sentencing, the 8th amendment."⁶⁰ An assessment instrument, according to the report, should be "validated by testing it with the population in question before adoption for general use."⁶¹ The report also calls for periodic revalidation. Validation is a question of limitation—an instrument should not be used for purposes for which it was not validated. The Colorado legislature amended the state's pretrial services law by permitting pretrial assessment tools to be used "solely for the purpose of assessing pretrial risk" in response to this problem.⁶² Some prosecutors and defense lawyers were using the risk assessment for purposes of plea negotiations, a purpose for which it was not validated.

There have also been serious due process concerns with risk assessments, leading one group of researchers to call for core public agencies to stop using certain types of risk assessments.⁶³ Although there has been little litigation in the pretrial context, *State v. Loomis*,⁶⁴ a recent case decided by the Wisconsin Supreme Court, would not permit the use of the risk assessment unless it met particular safeguards designed to protect due process rights. While *Loomis* was decided in the sentencing context, the due process concerns in the pretrial context are similar. The decision permitted the use of COMPAS, a proprietary algorithm operated by a private company, but "circumscribed" its use.⁶⁵

The Court noted one important limitation on the use of COMPAS' algorithm, which is that its "risk scores are not intended to determine the severity of the sentence or whether an offender is incarcerated."⁶⁶ Of course, in the pretrial context, the Arnold Foundation's PSA tool and many other tools, combined with the judgment of a pretrial services worker, will recommend preventative detention or liberty-restricting

60. *Id.* at 5.

61. *Id.*

62. See S.B. 14-212, Gen. Assemb., Reg. Sess. (Col. 2014).

63. ALEX COMPOLO ET AL., *AI NOW, AI NOW 2017 REPORT 1* (2017), https://ainowinstitute.org/AI_Now_2017_Report.pdf [<https://perma.cc/7TJF-XMEY>] (noting that the "unreviewed or unvalidated use of pre-trained models, AI systems licensed from third party vendors, and algorithmic processes created in-house . . . raise[] serious due process concerns").

64. *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016).

65. *Id.* at 757.

66. *Id.* at 755.

conditions while an individual is released from jail pending trial. In New Jersey, for example, the PSA will recommend, via a grid, various categories of supervision based on the risk scores. For the highest risk cases, the tool recommends detention. The Wisconsin Supreme Court went a step further by saying that to pass due process, a tool “may not be considered as the determinative factor in deciding whether the offender can be supervised safely and effectively in the community.”⁶⁷

In the name of protecting due process, the court developed a series of required instructions designed to temper the blind application of the risk assessment as scientific. The court required that presentence investigation reports using the risk assessment tool include a series of warning, which include the following:

- (1) The proprietary nature of COMPAS has been invoked to prevent disclosure of information relating to how factors are weighed or how risk scores are to be determined.
- (2) A COMPAS risk assessment compares defendants to a national sample, but no cross-validation study for a Wisconsin population has yet been completed.
- (3) Some studies of COMPAS risk assessment scores have raised questions about whether they disproportionately classify minority offenders as having a higher risk of recidivism. Risk assessment tools must be constantly monitored and re-normed for accuracy due to changing populations and subpopulations.⁶⁸

The Wisconsin Supreme Court then issued one final warning to circuit courts, based on evidence in the record that risk assessments serve to group offenders but cannot identify whether a particular defendant falls within any statistical grouping:

However the due process implications compel us to caution circuit courts that because COMPAS risk assessment scores are based on group data, they are able to identify groups of high-risk offenders—not a particular high-risk individual. Accordingly, a circuit court is expected to consider this caution as it weighs all of the factors that are relevant to sentencing an individual defendant.⁶⁹

The Court also noted that Loomis had not challenged the use of the risk assessments under an equal protection theory.⁷⁰

B. Questions Regarding Proprietary and Black-Box Algorithms

As the push toward algorithm-based justice has gained steam, those designing algorithms range from college professors, to government employees and staffs, nonprofits, and for-profit corporations. As noted, the purpose of risk-prediction algorithms is to sort individuals into categories by identifying specific factors that may correlate with a greater likelihood of committing a new crime while on release and/or failing to appear in

67. *Id.* at 760.

68. *Id.* at 769.

69. *Id.* at 765.

70. *Id.* at 766.

court as required. The process of building an algorithm is an onerous one: it starts with collecting raw data, verifying the accuracy of such data, making certain data assumptions, conducting a mathematical analysis, correlating a particular set of factors into categories, assigning point values based on the magnitude of each factor, making specific decisions about the categories, and then designing a system to assign recommendations as to the non-monetary conditions that may be appropriate for defendants who fall within each risk category.⁷¹

Through the process of building and calibrating such algorithms, questions have arisen. Many researchers see the value of requiring proprietors of algorithms to be completely transparent as to the process by which they arrived at the algorithm. Proponents of algorithms often maintain that the factors used to score an algorithm are completely transparent, but in reality the data and process used to build them is beyond public view. In a report on regulating algorithms in criminal justice, AI Now Institute at New York University explained why black box algorithms, like the Arnold Foundation Public Safety Assessment, should not be permitted:

Core public agencies, such as those responsible for criminal justice, healthcare, welfare, and education (e.g. “high stakes” domains) should no longer use “black box” AI and algorithmic systems. This includes the unreviewed or unvalidated use of pre-trained models, AI systems licensed from third-party vendors, and algorithmic processes created in-house. The use of such systems by public agencies raises serious due process concerns, and at a minimum they should be available for public auditing, testing, and review, and subject to accountability standards.⁷²

The need for complete algorithmic transparency is necessary not only to protect due process rights, as the court recognized in *Loomis*, but also to prevent the danger of bias: “The danger of bias increases when these systems are applied, often in non-transparent ways, to critical institutions like criminal justice and healthcare.”⁷³

Rebecca Wexler of Yale Law School, recently wrote an article on the increasing use of trade secrets in criminal justice that are used to shield algorithms from transparency in policing, bail, and sentencing.⁷⁴ Many provisions protecting intellectual property are also contained in the contracts between nonprofit or for-profit corporations with various state and local entities. Wexler noted that, aside from the pros and cons of implementing a risk assessment regime (which remains an open debate),

71. See, e.g., MESA COUNTY PRETRIAL STAKEHOLDER GROUP, MESA COUNTY PRETRIAL SMART PRAXIS VERSION 3 (2013), <https://www.pretrial.org/download/risk-assessment/Mesa%20County%20SMART%20Praxis.pdf> [https://perma.cc/9X-GF-ATLP].

72. COMPOLO ET AL., *supra* note 63, at 1.

73. *Id.* at 14.

74. Rebecca Wexler, *Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 STAN. L. REV. (forthcoming 2018).

one fundamental piece of the analysis is missing: ownership.⁷⁵ She noted that privatization of the justice system is a growing concern as a result of the acceleration of the deployment of these systems:

Automation is intensifying the privatization of the justice system. Similar to private prisons that have been found to under-maintain safety and security, or private police who operate with minimal training and oversight, new criminal justice technologies are primarily privately owned. Developers often assert that details about how their tools function are trade secrets. As a result, they claim entitlements to withhold that information from criminal defendants and their attorneys, refusing to comply even with those subpoenas that seek information under a protective order or under seal.⁷⁶

Wexler is concerned that secrecy is a continuing and growing trend:

To date, scholars and practitioners have largely overlooked the fact that new technologies entering criminal proceedings are bringing intellectual property claims with them. But conflicts surrounding this doctrinal trend are likely to multiply. The Defend Trade Secrets Act of 2016 established the first federal civil cause of action for trade secret misappropriation, while the Supreme Court's 2014 decision in *Alice Corporation v. CLS Bank International* made it harder to patent software. Future developers of data-driven systems are therefore likely to depend ever more heavily on trade secret protections.⁷⁷

As a general rule, trade secret protections for software in the criminal justice system are simply presumed at this point. As Wexler notes, "[t]he dearth of scholarly attention has been accompanied by uncritical acceptance of trade secret evidence in criminal cases."⁷⁸

The question then becomes, what changes are needed to force transparency? Wexler's research is primarily focused on an individual criminal proceeding rather than the broader legal and policy questions of transparency raised by the AI Now Institute report. She calls on the courts to change rules of evidence and on legislatures to enact laws that essentially allow for the discovery of the underlying information used to construct the algorithm:

But trade secret holders should wield no special power to block criminal defendants' access to evidence altogether. Courts should refuse to extend the privilege wholesale from civil to criminal cases, and legislatures should pass new laws that limit safeguards for trade secret evidence in criminal proceedings to protective orders and nothing more.⁷⁹

In the broader debate on bail reform, this issue is often lost in favor of debating the merits of risk algorithms as a determinant of pretrial liberty without considering the fairness of basing decisions about liberty on

75. *Id.* at 6.

76. *Id.* at 6–7 (footnotes omitted).

77. *Id.* at 7 (footnotes omitted).

78. *Id.* at 9.

79. *Id.* at 10 (footnotes omitted).

“secret evidence” that neither the defendant nor the decisionmaker is entitled to view.

Yet, these issues are real. Researchers in one study made sixteen public information requests to find out how the Arnold Foundation tool was built.⁸⁰ While noting that the Arnold Foundation tool does disclose the factors that are scored, which many others do not, the researchers discovered that the Foundation still cloaks its algorithm in secrecy:

However, the Arnold Foundation has not revealed how it generated the algorithms, or whether it performed pre- or post-implementation validation tests, and if so, what the outcomes were. Nor has it disclosed, in quantitative or percentage terms, what “low risk” and “high risk” mean: is the chance that a “low risk” defendant will fail to appear one in ten or one in five hundred? Is the chance that a “high risk” defendant will fail to appear twice that of a low risk defendant or fifty times?⁸¹

Ultimately, the researchers succeeded in obtaining information from only one of the sixteen counties from which the information was requested. Some did not respond at all. About a fourth informed the researchers that, “they could not provide information about PSA because that information was owned and controlled by the Arnold Foundation.”⁸² Thus, after all of these efforts, the researchers aptly noted that we still know nothing about how the tool was developed:

From the Foundation’s website, the documents provided by the Seventh Judicial Circuit, and the statement the Foundation produced for us, we know that the Foundation created the PSA algorithms by analyzing data in about 750,000 cases. We know nothing about how it analyzed that data, what alternatives it tried, or how those alternatives compared to the PSA algorithms it ultimately adopted.⁸³

The Arnold Foundation has said that this practice was only limited to “early adopting jurisdictions” and that the Foundation will now be transparent. Yet, according to the researchers, “[a]s far as we can tell, however, the confidentiality provisions are not limited to ‘early adopting

80. See Brauneis & Goodman, *supra* note 54, at 138.

81. *Id.* While the Arnold Foundation has disclosed the based risk percentages, each individual jurisdiction may have different percentages as noted in example of the Seventh Judicial Circuit of Florida. While the base percentages have been disclosed, the percentages in the risk matrix that are constructed in each jurisdiction are not disclosed nor is the process, records, or deliberations related thereto. In other words, under the purview of typically the judicial branch, a stakeholder group will go into a room and assign the percentages and decide other issues like which crimes qualify as violent under the definition of the tool. LAURA & JOHN ARNOLD FOUNDATION, DEVELOPING A NATIONAL MODEL FOR PRETRIAL RISK ASSESSMENT, http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf [https://perma.cc/CG5X-N9MM] (last visited Oct. 2, 2018).

82. See Brauneis & Goodman, *supra* note 54, at 138.

83. *Id.* at 141.

jurisdictions,' and the provisions all say that they require confidentiality in perpetuity."⁸⁴

The issues of secret algorithms and a lack of transparency among such algorithms are real. As discussed above, the largest proprietor of a bail algorithm—The Arnold Foundation—has failed to meet basic transparency requirements recommended by the AI Institute and as recommended by Wexler. Yet, state legislators and local governments, with one notable exception,⁸⁵ continue to promote the use of algorithms without concrete evidence of success, assuming that the science is good enough that we need not worry about an algorithm's accuracy. While Senate Bill 10 in California does provide some safeguards regarding the deployment of such risk assessments, such as requiring validation and encouraging them to be racially fair, fundamental issues, including those associated with the use of proprietary and black-box algorithms, and not requiring full transparency, remain of utmost concern. Of course, these issues are not limited to algorithms used in the setting of bail, but they are of heightened concern when algorithms play a key role in potentially depriving presumptively innocent defendants of their freedom.

C. *Potential for Discrimination*

As previously noted, transparency is a critical safeguard that allows the public and the parties to a criminal case to assess the potential for bias or unlawful discrimination in the operation of a risk assessment regime. It is difficult to reach a generalized conclusion regarding any bias that might be inherent in algorithms and whether they contribute to unlawfully discriminatory detention decisions. Assessments of bias will vary with the particular jurisdiction's reliance on algorithms, the particular algorithm, or even the particular case. At this point, it is probably fair to conclude with a cliché: the jury is out on whether the algorithms can be bias-free or are actually able, as some claim, to reduce bias. Uncertainties aside, bias is a worthy topic of consideration and California Senate Bill 10 imposes significant requirements that represent a reasonable attempt to address this issue.

It may be pointless to ask whether the use of risk assessments in the criminal justice system imposes more bias than a system that does not employ such algorithms. As one scholar recently noted:

Determining whether or not a risk tool is racially biased is probably redundant " Machines are trained on human data. And humans are biased." The important question is whether the use of actuarial risk assessment tools results in more disparate outcomes than the status quo, or other viable alternatives. Outside of the

84. *Id.*

85. Zoë Bernard, *The First Bill to Examine 'Algorithmic Bias' in Government Agencies Has Just Passed in New York City*, BUS. INSIDER (Dec. 19, 2017, 1:03 PM), <http://www.businessinsider.com/algorithmic-bias-accountability-bill-passes-in-new-york-city-2017-12> [<https://perma.cc/TAZ8-EJQG>].

research presented in this study, the empirical research on this is next to nonexistent.⁸⁶

Unsurprisingly, the results of empirical research in several studies confirm that risk assessments are discriminatory. In one study, researchers found that “software used across the country to predict future criminals [is] biased against blacks.”⁸⁷ In another, researchers concluded that, “[a]s algorithms increasingly make decisions based on historical and societal data, existing biases and historically discriminatory human decisions risk being ‘baked in’ to automated decisions.”⁸⁸

As legislators recognize the problem of bias in predictive algorithms, they may be inclined to study or restrict their use rather than adopting them wholesale. This has already happened in New York. New York City recently adopted a bill to address algorithmic discrimination in city government⁸⁹ and one hundred community groups across New York authored a letter to Governor Cuomo, demanding that the state not rely on risk assessments in criminal justice because “the use of risk assessment instruments to predict dangerousness will further exacerbate racial bias in our criminal justice system; and the use of these instruments will likely lead to increases in pretrial detention across the state.”⁹⁰

The Arnold Foundation boldly asserts that its Public Safety Assessment is both race and gender neutral⁹¹ but this has not been evaluated by independent researchers.⁹² It is one thing to assert that there is no impermissible bias; it is another to prove the existence of absolute neutrality.

While the Arnold Foundation’s Public Safety Assessment was previously discussed, the reality is that many courts and policymakers regard

86. Megan T. Stevenson, *Assessing Risk Assessment in Action*, 103 MINN. L. REV 29 (forthcoming 2018) (footnote omitted).

87. Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [<https://perma.cc/9PUZ-4CA9>].

88. Nicholas Diakopoulos & Sorelle Friedler, *How to Hold Algorithms Accountable*, MIT TECH. REV. (Nov. 17, 2016), <https://www.technologyreview.com/s/602933/how-to-hold-algorithms-accountable> [<https://perma.cc/2JNZ-W62G>].

89. Lauren Kirchner, *New York City Moves to Create Accountability for Algorithms*, PROPUBLICA (Dec. 18, 2017, 12:08 PM), <https://www.propublica.org/article/new-york-city-moves-to-create-accountability-for-algorithms> [<https://perma.cc/3HRS-D7HQ>].

90. Letter from Over 100 Community & Advocacy Groups across New York State to Andrew Cuomo, Governor, N.Y. (Nov. 2017), https://d3n8a8pro7vhmx.cloudfront.net/katal/pages/1242/attachments/original/1511364954/FINAL_Bail_Letter_to_Governor_Cuomo_-_11.22.2017_-_10.30am.pdf?1511364954 [<https://perma.cc/TU7G-NFQ9>].

91. LAURA & JOHN ARNOLD FOUNDATION, RESULTS FROM THE FIRST SIX MONTHS OF THE PUBLIC SAFETY ASSESSMENT—COURT IN KENTUCKY 4 (2014), <http://www.arnoldfoundation.org/wp-content/uploads/2014/02/PSA-Court-Kentucky-6-Month-Report.pdf> [<https://perma.cc/CW7A-D84F>].

92. For example, the Arnold Foundation states the PSA “accurately classifies defendants’ risk levels *regardless* of their race or gender, meaning it does not have a discriminatory impact.” *Id.* Yet, this assertion comes from a report authored by the Foundation, not an independent researcher.

it as transparent and as a sort of gold-standard. When it comes to other risk assessments, some designed even at the local level, the issues raised in this Part become even more important.

D. Separation of Powers

As I have sat in the halls of legislatures and local policy forums listening to calls from judiciaries to contract with third-party vendors and approve their own algorithms for purposes that affect the rights of litigants in a criminal case, I have wondered whether it was appropriate for the judiciary to engage in this exercise. These calls have been fueled by proclamations from national court associations, such as the Conference of Chief Justices or the Conference of State Court Administrators.⁹³

The power to make court rules in the federal system, upon which many state systems are modeled, is defined as “the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.”⁹⁴ Of course, this power is subject to an important limitation: “Such rules shall not abridge, enlarge or modify any substantive right.”⁹⁵

Although a full analysis of these questions is beyond the scope of this Part, instead, I pose a simple question: Does the use of an algorithm to determine pretrial release decisions abridge, enlarge, or modify any substantive right of criminal defendants? While not every use of an algorithm will significantly affect the substantive rights of a criminal defendant, algorithms that inform and make recommendations regarding direct questions of substantive rights are concerning. Such recommendations have nothing to do with procedure or practice. Instead they are designed to categorize defendants and intentionally impose a more or less harsh restraint on their liberty (whether it be incarceration or a mixed-bag of electronic monitoring and supervision) based on that categorization. My reasons for concern are set forth below.

First, it is important to note that the decision to employ an algorithm is a policy choice. As one commentator has noted:

93. The adopted resolution by the Conference of Chief Justices states that the Conference stands resolved to “accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of nonfinancial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.” *Resolution 3: Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release*, CONFERENCE OF CHIEF JUSTICES (Jan. 30, 2013), <http://www.pretrial.org/wp-content/uploads/2013/02/CCJ-Resolution-on-Pretrial-1.pdf> [<https://perma.cc/G56K-UNGJ>]; CONFERENCE OF STATE COURT ADMINISTRATORS, 2012–2013 POLICY PAPER EVIDENCE-BASED PRETRIAL RELEASE (2012–2013), <http://www.pretrial.org/wp-content/uploads/2013/02/CCJ-Resolution-on-Pretrial-1.pdf> [<https://perma.cc/G56K-UNGJ>].

94. 28 U.S.C. § 2072(a) (2012).

95. 28 U.S.C. § 2072(b) (2012).

When an entity chooses to create and proliferate an algorithm in furtherance of its own objectives, it also necessarily makes a value judgment about what matters and what does not. Choices about whether and how to employ algorithms are a business decision like any other. Values and choices are embedded in the design of the algorithm, just as they are reflected in a company's policy manual, board room, and standard operating practices. And like any decision, the choice to employ an algorithm—whether in pursuit of profits or efficiency or any other goal—entails the possibility of unknown consequences, both risks and rewards.⁹⁶

Thus, for courts to decide to either obtain an algorithm or to go into the business of approving one for statewide use is to make a value judgment and accept the embedded value choices of such an algorithm.

Second, because the choices that drive algorithms are based on value judgments, they are not scientific. The supervision matrix of the Arnold Foundation's tool can serve as an example of why this is problematic because the framework is typical of those used in the pretrial services context.⁹⁷ The Arnold Foundation decisionmaking framework, as used in Florida, creates six categories based on "the percentages of defendants by risk score who were released and failed to appear." The results, based on risk score, were: "1 (12%), 2 (16%), 3 (18%), 4 (23%), 5 (27%), 6 (30%)."⁹⁸ There has been no publicly disclosed scientific basis for making these the cut-off points.⁹⁹ Rather, these categories represent two value judgments: (1) how flexible a jurisdiction is willing to be in risking that defendants will miss court appearances, thereby wasting resources and delaying justice; and (2) how tolerant a jurisdiction will be in assessing the rates of new crimes committed by defendants who have been released from jail while awaiting trial. Of course, this is part of the Arnold Foundation's argument—that the decisionmaking framework localizes these decisions.

Thus, the question becomes whether it is appropriate for the courts to make these policy decisions about public risk rather than elected officials. Typically, courts will form a committee, in some cases open to the public and in some cases not, comprised of members selected and appointed by the courts to make such substantive decisions. But risk tolerance might just as easily be considered a legislative and not a judicial decision.

Imagine a scenario under the Arnold Tool where a defendant is classified as risk six instead of five. In New Mexico and New Jersey, this defendant would be detained without bail, and yet defense lawyers are

96. Rebecca J. Krystosek, Note, *The Algorithm Made Me Do It and Other Bad Excuses*, 101 MINN. L. REV. (May 17, 2017), <http://www.minnesotalawreview.org/2017/05/the-algorithm-made-me-do-it-and-other-bad-excuses/?platform=hootsuite> [https://perma.cc/K7VS-6X75].

97. See, e.g., MESA COUNTY PRETRIAL STAKEHOLDER GROUP, *supra* note 71. The Mesa County, Colorado "Smart Praxis" risk category scores range from one to four.

98. Brauneis & Goodman, *supra* note 54, at 29.

99. See *id.*

not yet challenging these cut-off points. In other states, this could be the difference between house arrest or not. In the Mesa County, Colorado example, discussed above, the differences between a two, three, and four are significant in terms of increasing restrictions on liberty.¹⁰⁰ Moreover, high-risk scores have another significant impact on individuals—higher bail, which can lead to additional pretrial incarceration. Yet, a court using the Arnold Foundation tool may impose preventative detention because a particular defendant is classified among a cadre of defendants who will commit new crimes or fail to appear in 30 out of 100 cases (a risk 6) versus a defendant classified in a different less-risky group of defendants who will fail to appear in 27 out of 100 cases (a risk 5).

When it comes to time for defendants to challenge these results, which they should, it will be difficult to establish that a three percent difference merits detention or a more stringent conditions of release, especially when courts have absolutely no way to determine which thirty of the 100 are the bad guys and which are the good guys. Basing decisions about liberty on such small differences is a far cry from scientific.

The Colorado Pretrial Assessment Tool, upon which the Mesa County tool is based, is even more forgiving to defendants, although the scoring weights do show how one factor can move a defendant from one risk category to another.¹⁰¹ The four risk tolerances that the Colorado tool utilizes bear on either the risk of failing to appear or the risk of committing a new crime. It is not clear whether the overlap has been removed, so looking just at the risk of committing a new crime, the sub-categories are as follows (with percentages representing a “public safety rate”): 1 (91 percent); 2 (80 percent); 3 (69 percent); 4 (58 percent).¹⁰² The points for each category from the scoring sheet are: 1 (17 or less); 2 (18–37); 3 (38–50); 4 (51–82).¹⁰³

If a defendant is under thirty-four years-old at the time of his or her first arrest, that factor alone will increase the score by ten to fifteen

100. See MESA COUNTY PRETRIAL STAKEHOLDER GROUP, *supra* note 71 (The differences between a two, three and four could range from supervision as low as getting a phone call reminding you to come to court all the way up to a combination of electronic home monitoring, GPS monitoring, substance abuse screening, and other correctional technologies in addition to differing rates of supervision charges passed on to defendants that increase based on supervision level and risk score.).

101. COLO. ASS’N PRETRIAL SERVS., THE COLORADO PRETRIAL ASSESSMENT TOOL (CPAT): ADMINISTRATION, SCORING, AND REPORTING MANUAL VERSION 2, at 9 (2015), <https://www.pretrial.org/download/risk-assessment/CPAT%20Manual%20-%20CAPS%202015-06.pdf> [<https://perma.cc/Y65Y-BYP9>] (last visited Oct. 2, 2018) (The age at first arrest below age 19 is a score of 15 and having another pending case is a score of 13, each of which are nearly enough to cause someone to be in risk category 2. Thus, if someone was already at a risk score of 37 in risk category two, either factor being present would leapfrog category 3 and make that person a category 4 risk.).

102. *Id.* at 9.

103. *Id.*

points, which could move the defendant from risk category two to risk category four.¹⁰⁴ Similarly, nine points will be assessed if the defendant is not “contributing to residential payments.”¹⁰⁵ This can quickly bring someone into a higher risk category simply because they are poor or living in a domestic partner’s home. Colorado further strives to protect the presumption of innocence by adding thirteen points if the defendant has another *pending* case, which is almost enough to move a defendant from category two to category four.¹⁰⁶

The decision to contract with proprietors of algorithms to build these tolerances into a decisionmaking framework is plainly a policy question more than a question of court procedure. It also directly affects the substantive rights of the litigants to a criminal case, as both the People and the defendant must live with the categorizations, recommendations based thereon, and subsequent decisions to either under-restrain or over-restrain liberty. Without these categorizations, judges would not sort people into such rigid categories. Instead, judges would make decisions based on information that is not weighted by a machine and forces no categories. The bail reform movement today does not soften these rigid categories. Instead, it perpetuates them. Thus, the question becomes, are there legal or other considerations that must be addressed when deciding whether algorithms should be used at all or at least regulated in some basic respects?

When it comes time for a defendant to challenge an algorithm approved by a State Supreme Court rule or other state judicial body, the defendant will face some difficult challenges. First, as we have seen, the proprietors of the algorithms will try to keep the underlying information used to construct the model secret. Second, a defendant will be asking a trial judge to find that the state’s highest court adopted an invalid algorithm or adopted one that is impermissibly discriminatory. This is a difficult position to put a trial judge in; indeed, trial court judges should not be placed in such a difficult position that requires them to consider whether higher courts have either signed a contract to conceal information from defendants in a criminal case or whether higher courts adopted an algorithm that is either invalid or impermissibly discriminatory.

As a new algorithm society, we are defining with particularity how much risk of crime and how many failures to appear we will tolerate. That is not a scientific decision. What is alleged to be scientific is that we can use the categories to approach the results that policymakers want. Courts then determine the rights of the defendants based on groupings within these “scientific” systems, while we have no present ability to distinguish whether any particular defendant will fall within or outside the dominant group. These are not decisions that should be made either in secret or by agencies or departments of state or local courts, even if

104. *Id.* at 3.

105. *Id.*

106. *Id.*

they are open to the public and have a transparent process. Whether it is legally permissible or ethical for the courts to recommend adoption of these systems, including a presumption against one form of bail or another, is a separate issue, but as a question of appropriate legal policy, there is no doubt that the courts are playing a legislative role.

IV. Do Risk-Based Systems Work Better than Financial Bail? Assessing the Costs and Goals of Bail Reform

Many, who are against the current bail reform movement claim that it is impossible to move to a no-money bail system. While perhaps not desirable, it certainly is possible. One can assess desirability through a cost-benefit analysis by analyzing the specific goals that previous reforms attempted to achieve, whether the goals were actually achieved, and then comparing what was achieved to the costs of implementing the reforms in order to determine in the end if reform was worth it.

Those who advocate for bail reform are primarily seeking to achieve three goals: (1) the reduction of mass incarceration; (2) similar or better appearance rates in court; and (3) a similar or reduced rate of new crimes while on bail. To achieve these goals, the reforms rely on one or both prongs of a two-pronged approach: (1) expanding preventative detention in order to reduce the use of financial conditions of bail; and (2) using risk assessments to release those who are determined to be low risk. In New Jersey and New Mexico, as in Washington, D.C. and the federal system, both prongs are used. In states like Colorado and Kentucky, only the first prong is used because these states still permit courts to set financial conditions of bail.

This Part looks at both the costs of implementing the no-money bail system or other systems designed to replace the financial conditions of bail and the benefits such systems have achieved.

A. New Jersey

In 2016, the New Jersey Association of Counties sued the state, alleging that forcing the counties to create a pretrial program was an unfunded mandate.¹⁰⁷ They alleged that the cost of implementation just for the portion paid by the counties would be between one and two million dollars on average per county,¹⁰⁸ with the Executive Director forecasting a fifty million dollar total expenditure annually just for county shares of the costs of bail reform.¹⁰⁹ The decision rendered in the case, however,

107. Complaint, In re Complaint Filed by the New Jersey Association of Counties Challenging Provisions of the Criminal Justice Reform Act as an Unfunded Mandate, No. COLM-0004-15 (N.J. Council on Local Mandates Dec. 6, 2016).

108. Caren Chesler, *New Jersey Counties Seeing Sticker Shock ahead of Bail Reform*, WHYY (Nov. 30, 2016), <https://whyy.org/articles/is-criminal-justice-in-nj-about-to-become-an-unfunded-mandate> [<https://perma.cc/C2NW-NT8L>].

109. Andrew Schmertz, *Bail Reform to Begin Despite Cost Concerns*, N.J. ASS'N COUNTIES (Dec. 29, 2016), <http://njac.org/bail-reform-to-begin-despite-cost-concerns> [<https://perma.cc/M7RA-Q4FT>].

was that the constitutional amendment required the counties to implement the new system and was not a legislative unfunded mandate.¹¹⁰

Unfortunately, there is no state or local cost estimate as to what the total cost has been to implement the no-money bail system in New Jersey. In fact, the New Jersey Attorney General was tasked with creating a cost estimate in 2017, and concluded that “we have no idea how much massive bail overhaul will cost NJ.”¹¹¹ There has, however, been at least one academic cost estimate, projecting the costs of the system to be approximately \$379 million annually, the savings to be \$164 million, resulting in a net annual cost of \$215 million.¹¹² Acting Administrative Judge Grant made the following statement regarding the funding of bail reform:

Sufficient funding, of course, remains a concern. Right now, the Criminal Justice Reform funding stream relies entirely on the increases in filing fees that the Legislature authorized. Last year, though, filings were down and therefore, as might be expected, revenue from those fees dropped as well.

If these filing trends continue, we project that starting with FY 2019, the Pretrial Services Program will begin to experience an actual deficit, not just the structural deficit that we already are facing. In other words, we project that we will have exhausted all of the program’s carryover balances from prior fiscal years and that the fee revenue will fall short, thereby leaving an unfunded negative balance.¹¹³

While one academic study estimated there would be savings to offset some of the costs, there has been, as noted, a drop in the jail population during the first year of bail reform. However, because this reduction came about prior to the bail reform, there is no proof that it was caused by bail reform. Indeed, in the calendar year before bail reform was implemented—2016—the non-sentenced pretrial population declined by 20.68 percent, and in the first full calendar year of bail reform—2017—the non-sentenced pretrial population declined by 20.3 percent.¹¹⁴ As one expert has noted, “one shift” in policy cannot be said to have driven such numbers, instead it is more accurate to “attribute[e] much of it to

110. In re Complaint Filed by the New Jersey Association of Counties, No. COLM-0004-15 (N.J. Council on Local Mandates Apr. 26, 2017).

111. S.P. Sullivan, *Attorney General: We Have No Idea How Much Massive Bail Overhaul Will Cost N.J.*, NJ.COM (Dec. 8, 2016, 8:30 AM), http://www.nj.com/politics/index.ssf/2016/12/ag_we_have_no_idea_how_much_massive_nj_bail_overha.html [<https://perma.cc/U53K-3VM5>].

112. DARAIUS IRANI & ZACHARY JONES, REGIONAL ECONOMIC STUDIES INSTITUTE, ESTIMATING THE COST OF THE PROPOSED NEW JERSEY PRETRIAL SERVICE UNIT AND THE ACCOMPANYING LEGISLATION 5 (2014), <http://www.americanbailcoalition.org/wp-content/uploads/2016/06/new-jersey-pretrial-final-report.pdf> [<https://perma.cc/L5GW-3EQD>].

113. Remarks before the Assembly Budget Committee by Judge Glenn A. Grant, Acting Admin. Dir. of Courts (Apr. 24, 2017), http://www.njleg.state.nj.us/legislativepub/budget_2018/JUD_Grant_testimony.pdf [<https://perma.cc/SRK8-B4C5>].

114. *Criminal Justice Reform Data*, *supra* note 47, at 5.

the creation of the state's drug courts that focus on diverting people from prison, as well as changes in the parole system that make it less likely someone will be put back behind bars for minor technical violations of their parole."¹¹⁵

Finally, while it would be nice to know what the New Jersey numbers look like in terms of new crimes while on bail, failures to appear while on bail, and new crimes while on a summons or failure to appear while on a summons, New Jersey, despite being thirteen months in on the reforms, has not released any data regarding outcomes that would allow anyone to conclude that the anticipated benefits were realized or that they outweigh the massive cost of paying for the new system.

Is the new system is fairer? Only 7.5 percent of defendants in New Jersey will be released on their own recognizance,¹¹⁶ while 70.1 percent of defendants will face some form of supervision as a condition of their release.¹¹⁷ Is it fairer to supervise those defendants and make them pay for their own blood chemistry monitoring or let them post a bail bond? In other words, are financial conditions proving to be more or less restrictive of liberty than the old system? It really is impossible to say without any understanding of the current jail population versus the jail population prior to the reforms.

B. Washington, D.C.

Washington, D.C. spends around \$63.48 million annually on its pretrial supervision program.¹¹⁸ This represents an increase in spending of roughly 28 percent over the last ten years in a city of less than one million residents.¹¹⁹ The program's goal in 2018 was to release 85 percent of all defendants.¹²⁰ Among those released, the goal was to have 87 percent make all court appearances and 88 percent remain crime-free.¹²¹ Of course, using the 87 percent figure for court appearances masks the true failure-to-appear rate because of those not making *all* court appearances many will fail to appear more than once. In addition, in FY 2016, 28

115. Ted Sherman, *Why is the N.J. Prison Population Shrinking? (It's Not Just about Less Crime . . .)*, NJ.COM (Sept. 27, 2017, 4:33 PM), http://www.nj.com/news/index.ssf/2017/09/why_is_the_nj_prison_population_shrinking_its_not.html [https://perma.cc/63QL-GYFQ].

116. *Criminal Justice Reform Data*, *supra* note 47, at 2.

117. *Id.*

118. PRETRIAL SERVS. AGENCY FOR D.C., CONGRESSIONAL BUDGET JUSTIFICATION AND PERFORMANCE BUDGET REQUEST FISCAL YEAR 2018 4 (2017), <https://www.csosa.gov/about/financial/budget/2018/FY18-PSA-CBJ-Performance-Budget-05232017.pdf> [https://perma.cc/NX2Z-T5MA].

119. *See* DISTRICT OF COLUMBIA PRETRIAL SERVS. AGENCY, CONGRESSIONAL BUDGET JUSTIFICATION AND PERFORMANCE INFORMATION: FISCAL YEAR 2008 9 (2007), <https://www.psa.gov/sites/default/files/FY2008%20PSA%20Congressional%20Budget%20Justification.pdf> [https://perma.cc/9HNM-DVC3].

120. PRETRIAL SERVS. AGENCY FOR D.C., *supra* note 118, at 16.

121. *Id.*

percent of defendants were out of compliance with their terms of pretrial supervision at the conclusion of their cases.¹²²

Because the current system in D.C. dates back to 1963,¹²³ it is almost impossible to compare it to the previous system. But it is clear from looking at this system that it is both expensive and labor intensive. States that implement a system modeled on the D.C. system should therefore expect to make a substantial investment of public funds. While the D.C. data can be compared to other programs, it is hard to say that the expense is worth the results.

C. *Kentucky*

In a forthcoming article that studied risk assessments in practice, the author concluded the following:

[T]here is a sore lack of research on the impacts of risk assessment in practice. There is no evidence on how the use of risk assessment affects racial disparities. There is no evidence that the adoption of risk assessment has led to dramatic improvements in either incarceration rates or crime without adversely affecting the other margin.¹²⁴

Stevenson reached this conclusion after reviewing data and studies from as many as eight jurisdictions. The article's main focus, however, was Kentucky.

The Kentucky model, which proponents of bail reform point to as a success, was clearly debunked. Using six years' worth of data, Stevenson came to a variety of conclusions. Importantly, she found that the use of the Arnold Foundation Pretrial Safety Assessment in Kentucky actually increased failures to appear in court. As she noted:

Figure 7 shows a sharp jump up in the failure-to-appear rate (defined as the fraction of all defendants who fail to appear for at least one court date) from before the legislation was introduced to after the new law was implemented. The size of the increase—about 3 p.p.—was not large in and of itself, but it is large relative to the base level: about a 40 percent increase over the mean. The introduction of the PSA did not lead to a decline in failures-to-appear. If anything, the FTA rate is slightly higher after the PSA was adopted than before.¹²⁵

Regarding the rearrest rates for new crimes, which proponents expect to go down, Stevenson also found that the opposite was true:

Inferring that HB 463 led to an increase in rearrests requires inferring that the drop in rearrests right before the introduction of the legislation was indicative of a meaningful change in trend that would have continued in the absence of the law. One could also argue

122. *Id.* at 22.

123. The system is now in its fifty-fifth year of operation. See *PSA's History*, Pretrial Services Agency for the District of Columbia, <https://www.psa.gov/?q=about/history> [https://perma.cc/Y86Q-72R6].

124. Stevenson, *supra* note 86, at 27.

125. *Id.* at 41.

that the drop down in rearrests towards the end of 2010 was just an idiosyncratic fluctuation in the rearrest rate, and the rise after the legislation was introduced was simply more idiosyncratic fluctuation. Alternative analysis, shown in the appendix, suggests that the former interpretation is more likely. *Regardless, it is clear that the increased use of risk assessments as a result of the 2011 law did not result in a decline in the pretrial rearrest rate.*¹²⁶

Despite all of the promises that expanding risk assessments would deliver fantastic results, in fact “the large gains that many had assumed would accompany the adoption of the risk assessment tool were not realized in Kentucky.”¹²⁷ In assessing what lessons other jurisdictions can learn from Kentucky, Stevenson explained that, “Kentucky’s experience with risk assessment should temper hopes that the adoption of risk assessment will lead to a dramatic decrease in incarceration with no concomitant costs in terms of crime or failures to appear.”¹²⁸

D. *New Mexico*

New Mexico has released no data indicating that its no-money bail system is a success. Rather, the state has simply asserted that the new court rules necessary to implement the no-money bail system did not increase crime.¹²⁹ Unfortunately, no funding was provided to implement the new system at the state or local level. With no such funding, it is proving difficult to implement the old bail system by implementing widespread preventative detention and supervision.

In addition, there are clear signs that the program is not working. One district attorney in New Mexico has said that in the six months prior to bail reform, 150 failure-to-appear warrants were issued, for an average of twenty-five warrants per month.¹³⁰ But in the three months after bail reform was implemented, 230 warrants were issued, for an average of seventy-six warrants per month.¹³¹ These numbers represent a 324 percent spike in failure-to-appear warrants.

As to its reductions in jail populations, New Mexico has provided no data. In February 2017, the average daily jail population in Bernalillo County (Albuquerque) was 1,200.¹³² New Mexico’s bail reform went into

126. *Id.* at 41–42 (emphasis added) (footnote omitted).

127. *Id.* at 51.

128. *Id.* at 53.

129. ADMIN. OFFICE OF THE COURTS OF N.M., KEY FACTS AND LAW REGARDING PRETRIAL RELEASE AND DETENTION 7 (2017), https://www.nmcourts.gov/uploads/files/REVISED-Pretrial%20Release%20and%20Detention%20Key%20Facts%209_28.pdf [https://perma.cc/2FVS-WMBE].

130. Bryan, *supra* note 48.

131. *Id.*

132. Soyoung Kim, *Albuquerque’s Jail Population Drops to Lowest Levels Since it Was Built*, KRQE (Feb. 24, 2017, 5:28 PM), <http://krqe.com/2017/02/24/albuquerque-jail-population-drops-to-lowest-levels-since-it-was-built> [perma.cc/473S-KZMA].

effect on July 1, 2017.¹³³ As of February 10, 2018, the Bernalillo jail population was 1,376.¹³⁴ Although this change is probably not significant since the jail population has previously ranged from 1,100 to 1,400, this nonetheless represents a 14.6 percent increase in the jail population in one year, suggesting that no dramatic decrease in jail populations followed implementation of the new system.

In addition, there is no data indicating the number of crimes committed while on bail. But, Governor Martinez has said that the system had “devastating effects,”¹³⁵ citing some high-profile cases for that proposition.¹³⁶ Some state legislators have also found that something is wrong with the system. As one state senator noted, “[t]he public is expecting something to be done.”¹³⁷ It is probably a fair conclusion to say that the public is generally not concerned with failures to appear and is more concerned with new crimes committed while on bail.

Absent any numbers, New Mexicans continue to be exposed to a system created by the courts, not funded by the legislature, and not endorsed by the Governor for which there is no statistical data indicating that it has met any of the tripartite goals that it was designed to achieve.

E. California

On May 15, 2017, the California State Senate’s appropriations committee staff issued a fiscal analysis of California Senate Bill 10, which as noted above, would implement a risk-based supervision system without expanding preventative detention. In its fiscal analysis, the staff noted the first significant cost: “Major likely-reimbursable costs in the hundreds of millions of dollars annually (local funds/General Fund) to counties to establish and operate pretrial services agencies with all the entailing responsibilities imposed by this measure.”¹³⁸ There were also several other significant categories of costs in the hundreds of

133. *Rule Set 6—Rules of Criminal Procedure for Magistrate Courts*, N.M. COMPILATION COMMISSION (Rule 6-409), http://www.nmcompcomm.us/nmrules/NMRules/6-409_6-5-2017.pdf [<https://perma.cc/FL6V-4VWW>].

134. There is no indication there has been a drop and the population has been within the range of 1100 to 1400 and thus any changes are insignificant. However, refer to this link, <https://app.bernco.gov/custodylist/CustodyListInter.aspx>, then click submit. It shows 1518 persons in custody as of 6/9/18, thus indicating that there has been an increase.

135. Fernanda Lopez & Chris McKee, *Lawmakers Talk Solutions to “Bail Reform” Constitutional Amendment Problem*, KQRE NEWS 13 (Oct. 27, 2017, 12:56 PM, updated 10:15 PM), <http://krqe.com/2017/10/27/legislative-criminal-justice-sub-committee-discusses-bail-reform-friday> [<https://perma.cc/N6KP-GW4C>].

136. Colleen Heild, *Governor Invokes High-Profile Cases in Bail Reform Attack*, ALBUQUERQUE JOURNAL (Oct. 22, 2017, 10:22 PM), <https://www.abqjournal.com/1081592/gov-invokes-high-profile-cases-in-bail-reform-attack.html> [<https://perma.cc/H9CD-UZJU>].

137. Lopez & McKee, *supra* note 135.

138. Cal. S. Comm. on Appropriations, Report, S.B. 10, 2017–2018 Reg. Sess., at 1 (May 15, 2017).

thousands and millions of dollars.¹³⁹ Although the report did note the possibility of cost savings, the analysis concluded that the amount of costs that might be saved was “unknown.”¹⁴⁰

Clearly, California will devote significant resources to implementing this program, and the results of other states give scant reason to suspect that the results, either in terms of reduction in jail populations, maintaining levels of new crimes on bail or appearance in court, or making the system fairer for defendants, will be sufficient to offset those costs.

CONCLUSION

Based on the available literature, it remains unknown whether moving to the federal or New Jersey no-money bail systems can produce sufficient benefits to offset the overwhelming costs. The most comprehensive and recent research produced by independent third parties suggests that the risk-assessment process has not been proven to achieve any of the tripartite goals that bail reform intends to achieve. Despite all of the advances in computing technology, it is fair to say when it comes to bail reform it is 1984 all over again.

139. *See id.* (These costs include creating pretrial agencies, training, supervision services (drug screening, electronic home monitoring, etc.), additional attorneys to represent defendants at bail hearings, data reporting and compliance monitoring.).

140. *Id.*

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THE THIRD GENERATION OF BAIL REFORM IN AMERICA:

IS THIRD TIME THE CHARM?

**By Jeffrey J. Clayton, J.D.,
Executive Director,
American Bail Coalition**

Those not paying close attention may have missed what has been the relatively recent groundswell of activity on the issue of bail reform. In fact, Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, recently termed the current push as the "third generation of bail reform in America," while likening the movement to that of a "runaway train."

Whether that is true is debatable, but the question before us is, what is this so-called third generation and will it deliver on what it promises?

The central argument of bail reform proponents is that the size of someone's wallet should not determine whether or not they get bail. Instead, they contend, whether someone is released should be decided by either the risk of their failing to appear in court as required or committing a new crime.

They posit that measuring this risk can be accomplished by using computer algorithms that can help us sort people into all the right categories. Theoretically, these computers will efficiently assign not only bail, but non-monetary conditions of release. They argue that if done correctly, people will show up for court, we will reduce racial disparities in the system and crimes will be reduced while they are out on bail.



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Because reformers want to move away entirely from monetary conditions of bail, they are suggesting two options. The first presumes innocence from the time of arrest and releases everyone arrested on a promise to appear. This option is the least popular among policy makers and law enforcement because no weight is given to existing charges, which are based on the very premise of the presumption of innocence.

The second, and more popular, approach, is to advocate for the expansion of preventative detention—detention without the possibility of bail. In order to accomplish this, the constitutions of many states would have to be changed to eliminate the right to bail and replaced with a bi-polar system. If implemented, a person would automatically be released upon delivery to a jail, unless a prosecutor files a motion for preventative detention. That is, if he or she can prove by clear and convincing evidence that the individual is a flight risk or danger to the community. This would be the procedure in every single case.

Bail reformers are also pushing for government-run programs to supervise criminal defendants, rather than subjecting them to the need to post a financial bail. They argue that supervision is an effective way to compel defendants to show up to court, while mitigating the risk of their committing new crimes while out on bail. The American Bar Association has encouraged this since the 1970s, by creating a standard that says any non-financial

conditions of bail are per se more restrictive than posting a financial condition of bail, whether it be a cash, property, or surety bond. Unfortunately, while correctional technology has improved leaps and bounds in the criminal justice system over the years, the standard has not been revised accordingly. Indeed, it can be reasonably argued that monitoring someone's blood chemistry is more restrictive than a posting of a financial condition of bail, which in most cases is provided for free by a third party.

The third generation really began in Colorado in 2012. A panel of the Colorado Commission of Criminal and Juvenile Justice considered the latest incarnation of bail reform, which was presented by its architect, Timothy Schnake. Ultimately, the panel rejected the bi-polar system. Instead, they recommended non-financial alternatives, including a statewide pretrial supervision program intended to offer judges alternatives to financial conditions of bail. The legislature eventually rejected it due to budget constraints—it was simply too expensive to create a government-run bail system.

In 2014, the third generation moved onto New Jersey. Then-governor Chris Christie, a former federal prosecutor, liked the idea of going to a no-money bail system similar to the one used by the federal government. With his support, legislation was passed to change the state's constitution to eliminate the right to bail and instead allow prosecutors to file motions for detention. If they

failed to prove a danger or flight risk by clear and convincing evidence, defendants would then be released. This constitutional amendment became operational on January 1, 2017. During this same period, New Jersey contracted with the Laura and John Arnold Foundation to employ what is known as the Public Safety Assessment, a risk algorithm used to determine whether an individual gets detained, and, if not, what conditions of bail they would face upon release.

New Mexico decided to follow the lead of New Jersey in 2016. It changed its constitution and moved to what was intended to be a hybrid version of the current system and the New Jersey system. There would still be some financial conditions of bail set, but the actual use of such bails would be dramatically reduced. In the summer of 2017, Justice Charles Daniels of the New Mexico Supreme Court drafted court rules that implemented the no-money bail system in the state.

Throughout this past year, we saw numerous states, including Arizona, California, Connecticut, Ohio, and Texas, informed by the same third generation of bail reformers, issue reports that read exactly the same as one another. Each one called for a move to the federal or New Jersey systems.

So now, with several years to reflect upon what has transpired, the time has come to ask the question: did it work? The answer is, we do not yet know. But there are significant reasons to suspect that the new system is too costly and will fail to deliver on the promises made.

In New Jersey, Acting Administrative Judge Glenn Grant has said that bail reform in his state will run a deficit by the summer of 2018. Because the program faces a structural deficit moving forward, he is calling on the legislature for a comprehensive overhaul of the funding of bail reform. Compounding the problem, county governments within the state have had to shoulder the massive burden of attempting to supervise defendants.

The real problem in New Jersey is no one knows what the reforms will wind up costing. Christopher Porrino, the state Attorney General under Governor Christie, was ordered to conduct a study of the costs of the program and was unable to arrive at a figure. Rather, he attempted to shift away responsibility by stating that there was no way to know what the program would cost until it was fully implemented.

Reformers point to the reduction in New Jersey's jail population as evidence that reforms have delivered. The problem with this argument is that the jail population dropped more on a percentage basis in the year prior to bail reform compared to what occurred in the first full year after its implementation. During that same time frame, there was a significant drop in the number of crimes for which individuals would have been arrested. Finally, New Jersey state courts, after a full year of bail reform, have absolutely no data on whether the system actually reduced failures to appear in court or whether it had any impact on new crimes committed while defendants were out on bail.

Opponents of bail reform have pointed to the federal system's thirst for incarceration as a big reason not to crack open the door of preventative detention. Doing so, it has been argued would lead to abuse of the practice. Of course, that has already occurred. Since enactment of the Bail Reform Act of 1984, there has been a 303 percent increase in pretrial incarceration in the federal system.

So what's going on in New Jersey? Prosecutors are now filing motions for preventative detention in 44 percent of all criminal cases. That is a staggering number. In one jurisdiction in the state, prosecutors are filing motions to detain in 87 percent of cases!

As for the Public Safety Assessment recommendations, numerous horror stories are emerging that boggle the mind. In one instance, a criminal defendant named Jules Black was stopped for a traffic violation. He was a prior convicted felon with a rap sheet a mile long and was in possession of a firearm, which, of course, is prohibited for those with felony convictions. The Public Safety Assessment was run on Black and the result was...he was deemed not high enough risk to file a motion for preventative detention. Accordingly, he was released on a promise to appear. Two days later, he discharged 22 rounds into his neighbor, fatally wounding him.

Then there was the case of Brittan Holland, who got into a bar fight over a pro football game. Unlike Black, the Public Safety Assessment recommended preventative detention of Holland, who ultimately managed

to dodge incarceration. He asked to be allowed to post bail but was denied the opportunity. He wound up facing such restrictions on his liberty that he was unable to take his son to baseball practice.

Former U.S. Solicitor General Paul Clement sued New Jersey on Holland's behalf, arguing that the federal Constitution guarantees the right to bail. Further, he contended that consideration of a financial condition of bail must be on a level playing field with all other conditions and cannot be placed "behind an emergency glass." The U.S. Court of Appeals for the Third Circuit recently heard oral arguments in that case and a ruling is pending.

Meanwhile, New Mexico's new bail system is a total abysmal failure. The reason boils down to one simple thing: money. The state did not allocate a single dollar to its bail reforms because they were all driven by rules from the New Mexico Supreme Court. To illustrate the problem, while New Jersey is filing preventative detention motions in 44 percent of all cases, New Mexico is doing so in only 15 percent. New laws in New Mexico have meant that requiring security for release is no longer an option. Because of that, jails have turned into a revolving door for all but the worst of the worst. Practically speaking, this amounts to 5 percent of all those arrested being held in jail pending trial. This has caused community outrage, including calls by Governor Susana Martinez to repeal the new system due to the wave of crime it is causing in her state.

On the issue of reducing racial disparities in the system, there is no evidence whatsoever that it has worked in either New Jersey or New Mexico. New Jersey has no data on whether preventative detention is functioning in a race-neutral fashion.

Prior to implementation of the New Jersey reforms, the Laura and John Arnold Foundation released its own study, arguing that its Public Safety Assessment tool is race and gender neutral. Yet, because the tool is proprietary, that evaluation was conducted behind a curtain and, therefore, of questionable value.

George Mason School of Law professor Megan Stevenson conducted her own independent analysis of the Public Safety Assessment in Kentucky, which is also posited as a reformed jurisdiction. She reached the conclusion that after five years of using the tool, it did nothing to reduce racial disparities in the system. Instead, its use resulted in only a "trivial" decrease in jail populations. Crime while out on bail actually increased, as did failures to appear in court.

New Mexico has not released any evidence, other than the continuing proclamations by its state Supreme Court that their new system is entirely better than the old system. Architects are typically the last group of people to argue that their designs are flawed and the same is true when it comes to reforms advocated by government agencies.

As 2018 began, the forces behind the bail reform movement have

continued their efforts, using the same basic arguments in a number of states, including California, New York, Ohio and Florida. However, not since New Mexico and New Jersey implemented their controversial new laws has any other state chosen to follow their lead.

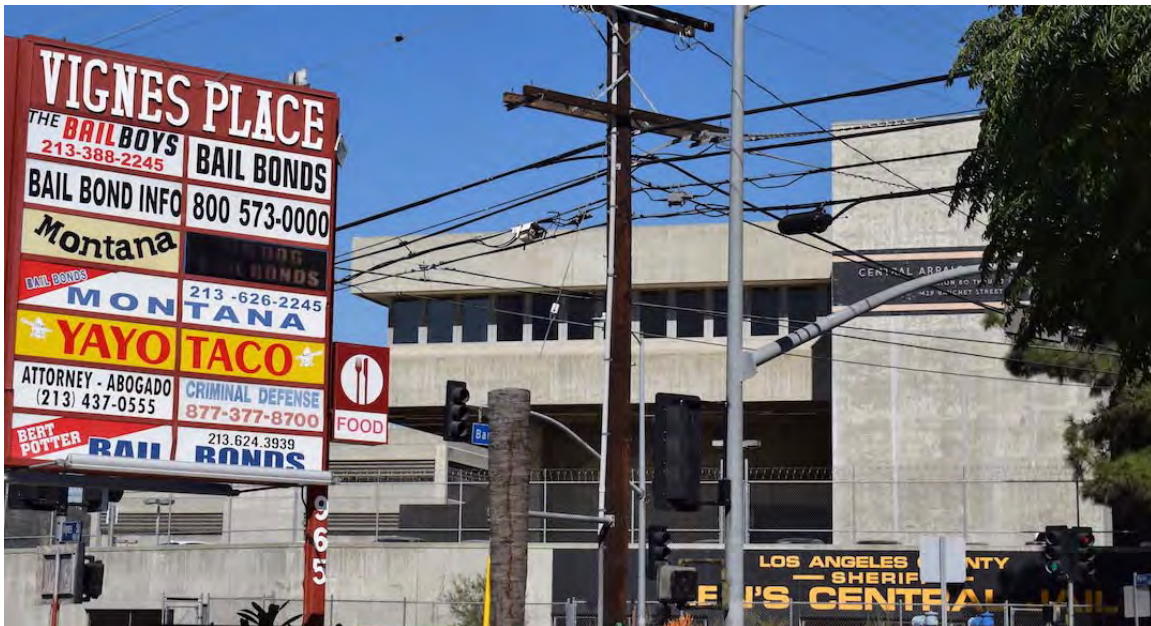
Ms. Burdeen and the Pretrial Justice Institute have likened the third generation of bail reform to a runaway train—and they may not actually be far off with that assessment. However, the problem is that without delivering on the promises that have been made for the last half decade, it is highly likely that many jurisdictions in 2018 will take a very careful look at the situation as they go careening down a very bumpy track. They may choose to simply get off this runaway train before it derails and crashes into a ravine.



Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years and also as a licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

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THE DEATH OF THE BONDSMEN?



by Shirsho Dasgupta

For more than three decades, Clay Potter has started his workday at 3 a.m. He works for at least 13 hours every day, from five in the morning to seven in the evening — “the daily grind”, he calls it, and the work doesn’t stop then. He often also gets calls from clients late at night.

Potter is a bail bondsman. As recently as October he thought he might be forced by changes in state law to shut down his 54-year-old bail bond company in a matter of months. But legal wrangling has brought a two-year reprieve, during which he hopes there will be a long-term solution that will enable him to keep the business up and running.

“We wrote our first bond in 1965,” said Potter, who was seven when he started helping out his father at his office. “My father started it...I’ve been waiting for years to take over the family business and expecting to be able to hand it on to my children, but as it stands now, I won’t be able to do that.”

In 2017, California Sen. Bob Hertzberg introduced SB 10, which aimed to completely abolish the state’s money bail system. In August of 2018, Gov. Jerry Brown signed the bill, making California the first state in the U.S. to end money bail. Brown said that the state was reforming its legal system so that **“rich and poor alike are treated fairly.”**

The bill, which was scheduled to take effect on October 1, 2019, would have put the **3,200 bail agents and companies** licensed by the state’s Department of Insurance out of work.

However bail agents across the state mobilized and undertook a massive signature gathering campaign, amassing nearly 600,000 signatures, almost double the number required to qualify for a ballot referendum. Now implementation of the bill is on hold until the 2020 election, when voters will decide whether to abolish the industry.

“When I was eighteen years old, I became a bail agent. I was supposedly the youngest bail agent in the United States at that time,” said Potter, sitting behind a desk stacked with files and official documents. After graduating from UCLA, he worked in the creative department of Paramount Pictures designing movie posters, he said. He returned to the business and took over when his father decided to retire.

“You can see how that’s working out, with Hertzberg, you know, trying to stop the bail bond business in California,” he said.



BAIL BOND ROW

The palm-lined parking lot at the intersection of Vignes and Bauchet streets is home to at least 10 bail agencies. Walk further down either side and one will find more. Located directly opposite the Men's Central Jail and the Twin Towers Correctional Facility, Vignes Place, or "bail bond row" as it is sometimes called, is a prime location.

Bail agents see their work as part of the service industry. Each office on Vignes Place advertises the services it provides. The windows of Potter Bail Bonds have stickers saying "Free Information", "All Jails All Courts", and "Lowest Prices". **The website lists more.**

Many of the bail agencies are family-run businesses, with non-descript offices resembling insurance companies. Potter Bail Bonds has three desks with desktop computers for the agents and filing cabinets lining one wall. Toward the rear is Potter's office. There is also a sofa and chairs for waiting clients. Nowadays though a lot of the business at Potter Bail Bonds is conducted over the phones, which ring frequently.

"Potter Bail Bonds. How can I help you?" is the standard response. It is also how Potter answers his mobile phone if the caller is unknown. His voice is always calm and respectful — any caller may be a potential client.

Potter said most of his clients are "nice" and "even gang members are never violent" because they understand that they need to get the bondsman to sign off on the bail. He said he's fascinated by how little parents sometimes their own children. In describing the parental denial that he encounters, he adopts the sort of gallows humor not uncommon in professions where humans in crisis is the norm.

"They think they're sweet kids, but they're like, gang members, you know, killers, shooters, and all kinds of things," he said, laughing.

Bail agents see themselves as providing a service vital to the functioning of the legal system.

"Bail has been part of our history and it has helped all people. It has helped the very people that they're saying it has not. We are just here to provide a service...and preserve the constitutional right [according to] the United States Constitution and the California Constitution," said Gloria Mitchell of the California Bail Agents Association.

Roger Sayegh, the owner of the Bail Boys, located next door to Potter's shop, concurred. "A lot of times when we bail out an individual, it could be because he was at the wrong place at the wrong time," Sayegh said. "We bail them out so that they could fight their case from the outside."

Sayegh studied criminal justice and Arabic at the California State University, San Bernardino with the hope of working for the Federal Bureau of Investigation or the Central Intelligence Agency.

"A colleague of mine opened up a bail bonds business, and I was his first agent," Sayegh said. "I kind of ran with it. I learned everything from him...It kind of fell into my lap and I've been doing it for like seven-eight years."

Sayegh said he is confident that his educational qualifications will enable him to find a job in another sector if the bail industry is abolished. However, he is not sure how the long-time veterans of the profession are going to cope.

"There's individuals who've been in the industry for about 40-plus years and they don't know anything else," he said. "So it's going to definitely harm them in regards to finding something different than what they've been used to for 'x' amount of years."

Places like Oregon, Kentucky, New Jersey and Washington D.C. are also working toward abolishing the bail system. Many think that California's passage of the bill is the beginning of the end of the industry, endangering the livelihoods of the roughly 25,000 bail agents nationwide.



A MISREPRESENTED INDUSTRY?

In 1898, Peter and Thomas McDonough established the first commercial bail bond firm in San Francisco. Nicknamed “The Old Lady of Kearny Street”, the business lasted 50 years and left a legacy “**prototypical of the growing commercial surety industry.**” Over time, as the commercial bail industry grew, so did criticism of it.

By 2016, when state politicians first started talking about abolishing the industry, it had long since moved beyond local “mom-and-pop” establishments. According to a **joint-study** conducted by the ACLU and Color of Change, a racial justice advocacy group, 10 multinational insurance companies underwrote almost all of the \$14 billion in bail bonds issued nationwide each year.

“About 450,000 people are held pretrial on various amounts of bail that they cannot afford to pay, therefore they do not obtain the constitutional right to release before trial,” said Shima B. Baughman, a law professor at the University of Utah and the author of *The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System*.

Despite federal reform measures passed in the latter half of the 20th century, excessively high bail amounts are still a problem. According to Jessica Farris of the American Civil Liberties Union, 60 percent of people incarcerated in California are in jail awaiting trial. The total numbers around 40,000 people and costs around \$5 million a day, she said.

Clay Potter said that the bail industry as a whole is misrepresented and disparaged because most people do not really understand how it works. For instance, he agrees that the bail amounts, especially in California, are too high but says that the fault does not lie with the bondsmen.

“The presiding judges are the ones that set the bails...I am not the guy setting the \$50,000 or the million-dollar bail amount,” he said.

Bail amounts are decided according to county bail schedules — a list compiled by judges that sets an amount according to the nature of offense. In the current legal system, if a defendant is unable to afford the bail amount, the person can pay a premium — usually 10 percent — to a bail company to front the money. If the person then fails to turn up for trial, the court grants a bail agency six months to find and bring the defendant to court. If they fail to do so, then the bail agency has to pay the full amount.

“A lot of bondsmen are not charging 10 percent anymore. It’s a state rate but a lot of bondsmen are charging less,” said Potter. Most people also don’t have enough to even pay the fraction for the bondsmen and most agencies allow them to pay in installments, he said.



Gloria Mitchell said that reform has to start with the judges and that the state's representatives in Sacramento have to understand that.

"They don't want to hear that but it really starts with the judges who once a year meet and make those bail schedules. We have always felt that that would be the best start and reform is needed. We want to support that and help come with a better solution," she said.

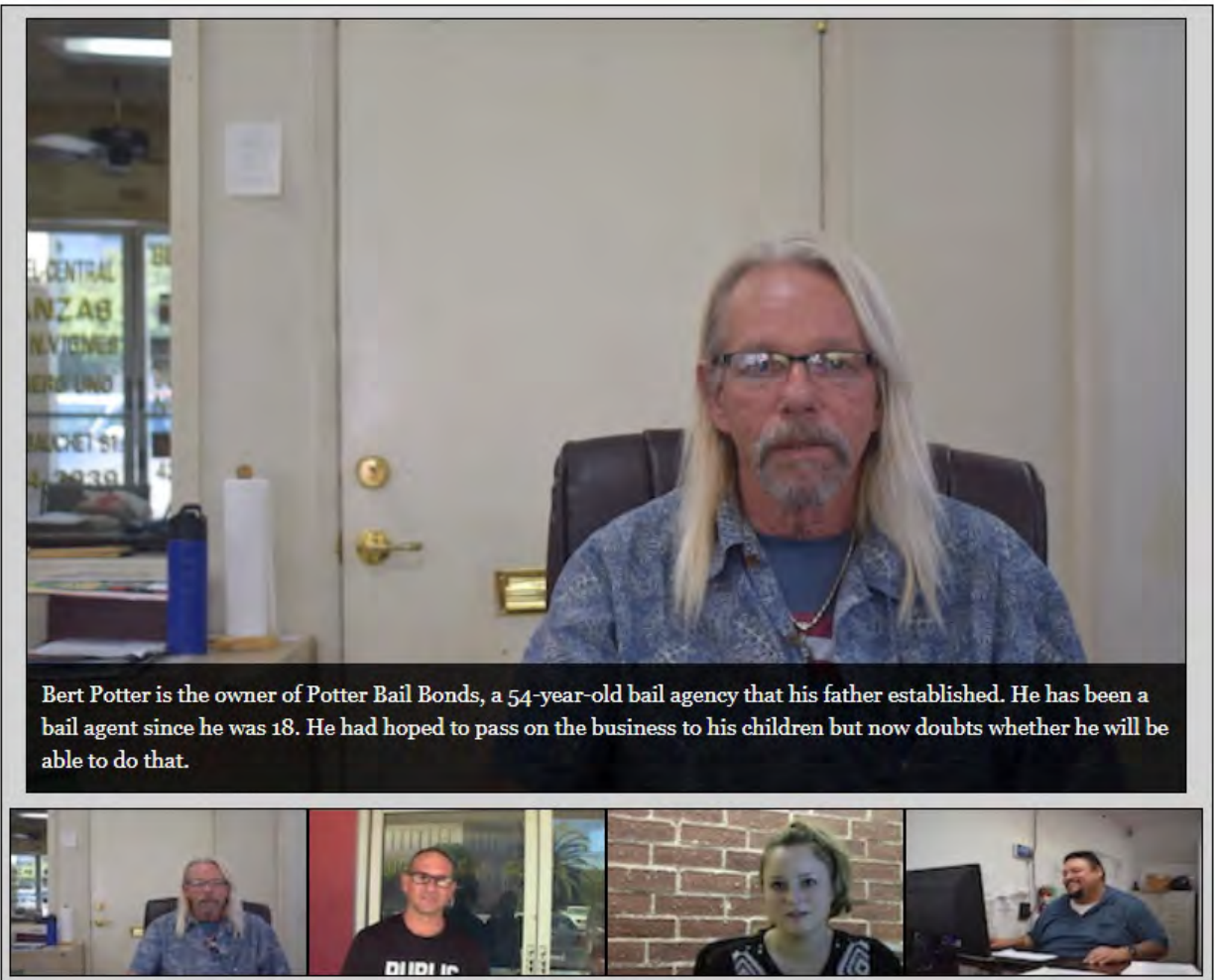
For very high bail amounts, agencies may also keep a house, car or some other possession as collateral. It is however, always a gamble. "In some cases, it's just a loss because you can't get money from somebody who doesn't have it," said Potter.

Most bail agencies are still small family businesses and do not write bonds worth billions annually, Potter said. According to him, those that do are all corporate bail bond chains.

"We're not trying to write a billion dollars in business every year like some [agency] that is owned by some, you know, holding company or whatever...They're just in it to make money," he said.

Potter said that the rise of these corporate chains also contributes to the bad reputation of the industry.

"It's a lot of the newer companies that come up, they think they're going to like get rich or something and the bail bond business is really not a get-rich-quick type of business...It's a long-term thing because you're responsible for...as long as somebody's fighting their case on bail," he said.



Bert Potter is the owner of Potter Bail Bonds, a 54-year-old bail agency that his father established. He has been a bail agent since he was 18. He had hoped to pass on the business to his children but now doubts whether he will be able to do that.

Potter said he is extremely careful when bailing out a person. The defendant's past arrest record, financial situation, and even whether or not the person has a family are just some of the factors he considers before signing off on a bail, he said. Some agencies, he said, are less cautious.

"If it's a family business, you're worried more about the risk and...you know, you really want to make sure it's a good bond. But it's some of the companies...they try to write everything and they...mislead you, or bother the shit out of you...Then the client would feel threatened like they're going to be put back in jail," he said.

Complaints about the industry are not just about the high bail amounts. A study conducted by the UCLA School of Law in support of the senate bill found that bail contracts often gave the sureties control over defendants' homes or cars offered as collateral and also gave leeway to agents to return their clients to jail or charge additional fees. Complaints also **abounded of aggressive recovery agents or "bounty hunters"** who often had limited knowledge of the law and methods of arrest.

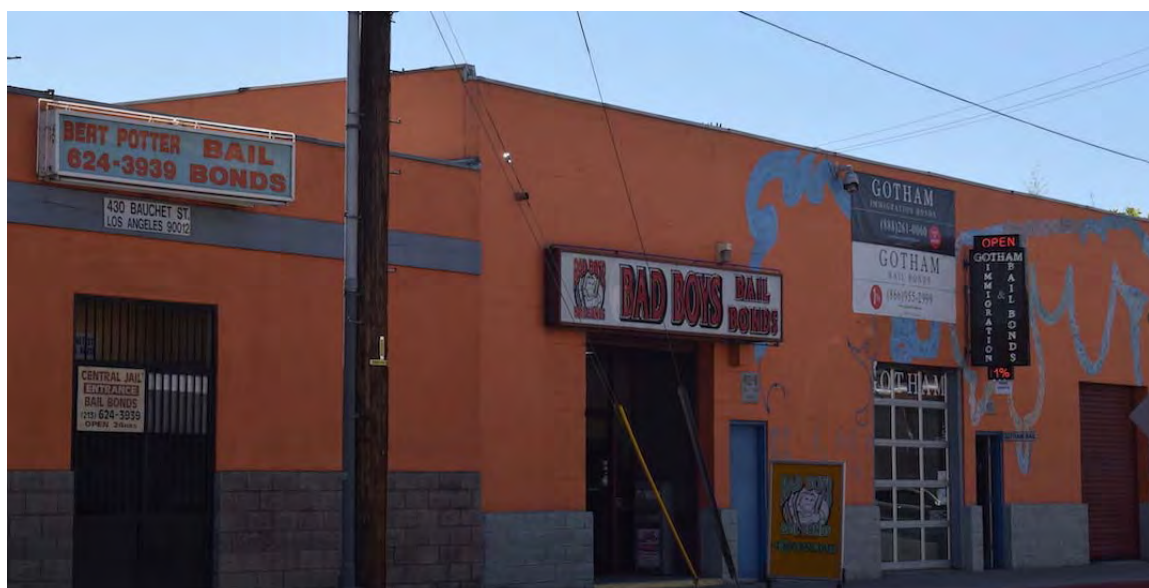
“You end up with, you know, some pretty gung-ho kind of people on occasion and then there are a lot of sensible bounty hunters who know their job and don’t get too crazy,” said Potter. Most recovery agents used to be ex-military or ex-police and were more reliable, but nowadays there are ones who became bounty hunters because they “just want to have an exciting life,” he said.

The ACLU had helped draft the bill to abolish commercial bail and implement a system of “risk assessment” that would assess how much of a risk a defendant posed to society if released and what the chances were of them appearing in court for their trial and then give the presiding judge a recommendation. The judge would then decide whether to release the defendant or detain them till trial.

According to Jessica Farris, a member of the organization, the ACLU wanted to exclude the arrest records of a person because arrests don’t necessarily lead to conviction. The initial bill however was amended to include arrest data. Before it went to the senate floor for a vote, the organization withdrew its support.

“The bill was basically gutted and amended and what passed is now a presumption of detention...It’s very nerve-wracking that it takes a flawed system...and replaces it with one that is potentially and almost definitely in certain counties going to be much worse,” said Farris.

The law is going to reflect already existing biases in the judicial system and will end up imprisoning more people, and even innocent people are going to lose their jobs or homes just because they were stuck in jail, she said.



WHO BAILS THE BAIL AGENTS?

“They wrote SB 10 because they feel that the bail system is unfair to poor people and I completely agree, I understand. But the way it is right now, there’s no discerning who’s getting released and who doesn’t. So for example, somebody that gets arrested, say it’s even mistaken identity — that happens a lot...they have to spend three days in jail before going to court,” said Daniel Valdez, who has been a bail agent for around four years.

Currently, he works at Answers Bail Bonds, a few hundred yards from the offices of Clay Potter. Some months ago, he became one among several thousand signatories to a petition that aims to stop the bill.

“We’re collecting signatures to put it on the 2020 ballot...to let the people decide if they want to keep it [the bail system] or not,” he said.

The campaign, led by the California Bail Agents Association and the American Bail Coalition has to put a referendum in the polls in 2020. Jeff Clayton, the president of the American Bail Coalition said that they managed to get 577,000 signatures, meaning that the law will not come into effect before 2020.

Despite reservations against the law, civil liberties organizations like the ACLU are not supporting the petition. The ACLU welcomes the end of commercial bail and will work to make the new system fairer and more just, Farris said.

Both Clayton, and Gloria Mitchell are confident that voters will cast their ballots in favor of keeping the present system in place. Potter however is more skeptical.

The industry is misrepresented and it is vital that the people understand it and also realize what will happen if the bail system is abolished, he said.

“I think if they really understand what it means if they don’t [vote to keep the bail industry] then they’ll definitely vote,” said Potter. Abolishing the bail system will mean that more people will be imprisoned and the government will also have to pursue those who skip trial, costing taxpayers millions of dollars, he said.

Clayton said that the bail industry will be working to change public perception of them and added that according to early data that the coalition had collected, the public is hugely supportive so far.

“A lot of people will vote against everything. There’s a built-in five-ish to ten-ish point advantage by, you know, being on the “no’ side,” he laughed.

The effects of the passage of the bill are however already being felt. Potter, for instance, said he decided to downsize his staff, based in part on the chance that the industry is nearing the end.

“We’re all pretty capable, bail agents. So we can all, you know, find other jobs,” said Valdez. Yet he does not know what he will do if the law takes effect.

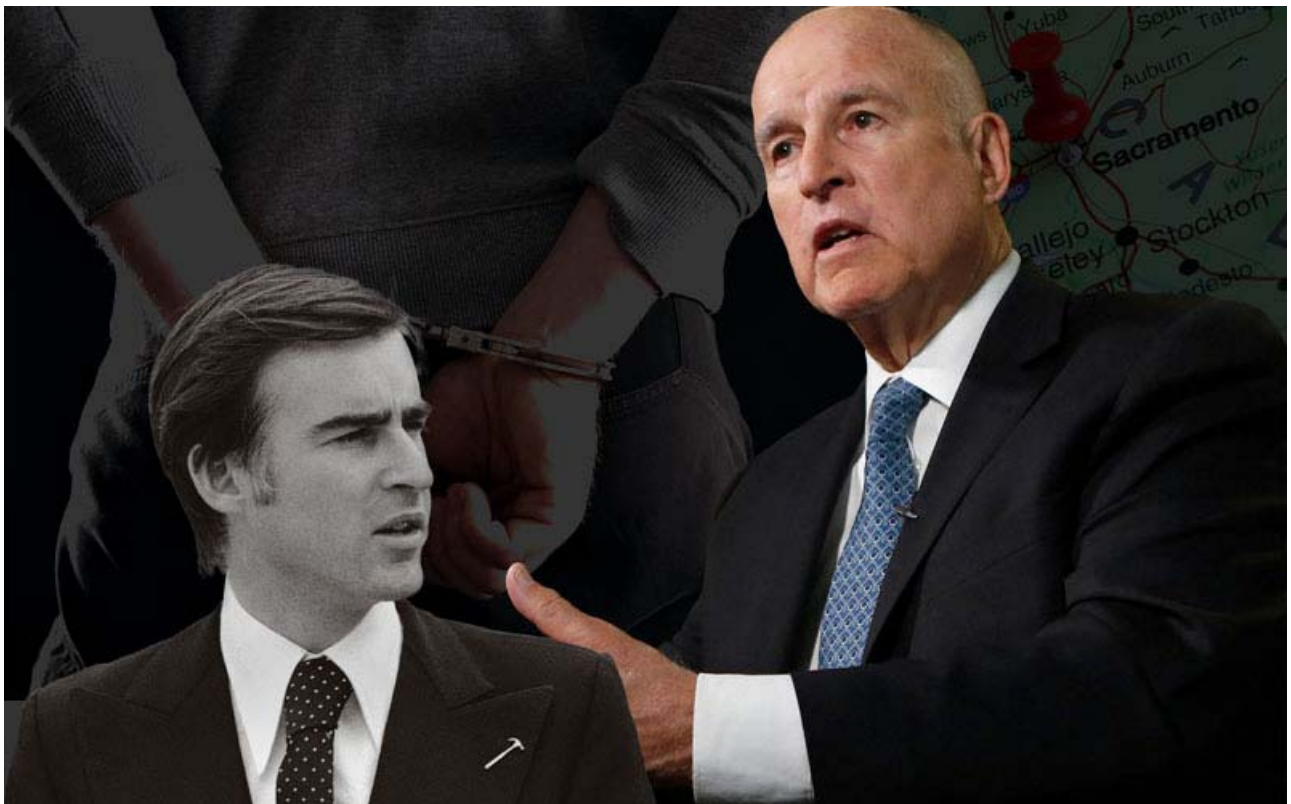
“I just think that it’s going to affect me but you know, I’ve been working hard all my life. So I’ll manage and I’ll be okay,” Potter said. Potter thinks that his interest in design will enable him to switch to the art industry if the bail system is abolished. He is also planning to open a clothing company.

The bail industry has been Potter’s life and if it shuts down, it would be difficult for him to adjust to a new one, he said. Like him, the 3,000 bail agents in California are pinning their hopes on the referendum. They hope that the people will vote in 2020 to keep the bail system in place.

“It is absolutely important. That’s really the only chance we have to stay in business,” said Potter.

Calif. Move From 'Tough On Crime' Marks New Era Of Reform

By Cara Bayles | December 16, 2018, 8:02 PM EST



Outgoing California Gov. Jerry Brown has undone many of the tough-on-crime policies he passed during his first stint as governor more than four decades ago.

Superior Court Judge Ross Moody rested his cheek in his hand as he mulled whether to send the woman standing before him in an orange jumpsuit to prison, though she hadn't been convicted of a crime.

A prosecutor wanted the woman, who was accused of violating a restraining order her mother had taken out against her, held on the \$30,000 bail prescribed by San Francisco County, but the woman's public defender argued she had no chance of affording the bond.

Attorney Nick Vangrin said his client's family had been "broken apart because of drug addiction." She was homeless, he told the judge, and had only gone to her mother's house to ask for money and clothes. If the court was inclined to set bail, he said, \$500 was more reasonable.

But the judge ultimately sided with prosecutor Sarah Spielberger, who called the woman a flight risk.

"All she had to do was comply with the civil injunction," Spielberger told the court. "She lasted maybe two weeks."

The October hearing exemplifies what critics like University of San Francisco law professor Lara Bazelon describe as two justice systems: one for the wealthy, who fight charges out of jail, and another for the poor, who are either incarcerated while they await trial or plead guilty even to crimes they didn't commit so they'll be released sooner.

"When a judge says to someone who's homeless, 'I'm going to set the bond at \$5,000,' they might as well set it at \$5 million," Bazelon said.

But a bill signed into law in August by outgoing California Gov. Jerry Brown seeks to remove money from the arraignment process starting in October 2019. The law has been part of a blitz of criminal justice measures Brown has approved before his term ends on Jan. 1.

Those measures, which also include easing punishments for minors and murder accomplices, garnered him both liberal accolades and censure from law enforcement groups saying he's gone soft on crime.

They would probably have drawn criticism 42 years ago from the Jerry Brown of his first gubernatorial administration, too. That Brown passed hard-line sentencing policies, and many advocates who now endorse his recent moves say he's one reason the state's prisons are overcrowded in the first place.

"If you know anyone who can figure out Jerry Brown, let me talk to them," said Brian Marvel, president of the Peace Officers Research Association of California, a lobbying group that represents 70,000 law enforcement professionals.

Brown declined to comment for this story, but his evolution could signal national trends in the politics of criminal justice, and other states may soon follow California's example.

Stanford law professor Robert Weisberg said Brown's policy shift might signal that "he wants to leave office with an emphasis on rational reductions in incarceration," some of which were passed by a young Gov. Jerry Brown, "who seems to have the same biological identity as the older Jerry Brown."

In 1976, Brown signed legislation that set up uniform sentencing guidelines and mandatory minimums, calling it a "major reform" providing "a certain, clear punishment for crime."

But, according to Weisberg, this determinate sentencing combined with a surge of subsequent "sentencing enhancements" — for gang involvement, sex crimes and gun possession — added years to defendants' prison time and contributed to California's skyrocketing incarceration rates. By 2006, Gov. Arnold Schwarzenegger declared prison overcrowding a state of emergency.

After inmates in 2009 won a court order requiring the state to slash its prison population by almost 30 percent, Brown, who was serving as Schwarzenegger's attorney general, did everything in his power to try to overturn that ruling, including an unsuccessful [U.S. Supreme Court](#) appeal.

Once he was again sitting in the governor's chair, Brown struggled to meet prison reduction benchmarks, according to Don Specter of the [Prison Law Office](#), who spearheaded the litigation.

But now Brown has been moving to undo some of his own past policies.

In August, he signed the legislation replacing cash bail with an assessment of various risk factors, which he said would guarantee that "rich and poor alike are treated fairly." The following month, he signed a bill that altered the felony murder rule so that accomplices, such as getaway drivers, could no longer be convicted of first-degree murder if a victim died at the hands of a co-conspirator.

While the Legislature drafted these bills, Specter said Brown deserves some credit.

"There was a lot of law enforcement opposition. The district attorneys were lobbying heavily against the change to the felony murder rule. The bail industry was lobbying hard against the cash bail bill," Specter said. "He did stand up to those pressures."

Two more bills signed by Brown would ease the prosecution of minors. One bars teenagers from being charged as adults, and another prevents children under 12 from being criminally prosecuted except in rape and murder cases.

That legislation piggybacks on ballot questions the governor spearheaded in previous years that made it harder to try juveniles as adults, allowed nonviolent offenders to seek early release for good behavior and reduced several felonies to misdemeanors.

Jerry Brown and Calif. Crime Policy Through the Years

Jerry Brown's political career has been long, twisting and at times paradoxical. California's criminal justice policy has also gone in opposite directions over the past five decades.

1971-1975

Secretary of state under Gov. Ronald Reagan

1975-1983

Governor of California

1976: Runs for Democratic nomination for president, loses to Jimmy Carter

1976: *Passes Senate Bill 42, creating a determinate sentencing structure in California*

1980: Runs for Democratic nomination as president, loses to Jimmy Carter (again)

1982 Runs for Senate instead of seeking a third term as governor, loses to San Diego Mayor Pete Wilson

1983-1988

Goes to Japan to study Buddhism and to India to work with Mother Theresa

1988: *California adds sentencing enhancements for gang involvement*

1988-1991

Chair of the California Democratic Party

1990: In Coleman v. Wilson, inmates sue the state in a class action over mental health care

1992

Runs for president but loses Democratic nomination to Bill Clinton

1994: California enacts "three strikes and you're out" law mandating life sentences for third-time felons

1998: California enacts "use a gun and you're done" sentencing enhancement, adding at least 10 years to a felony committed while the offender has a firearm

1999-2007

Mayor of Oakland

2001: In Plata v. Brown, a class of inmates sue the state over inadequate health care in overcrowded prisons

2006: Gov. Arnold Schwarzenegger declares prison overcrowding a state of emergency

2007-2011

Serves as attorney general during Gov. Arnold Schwarzenegger's administration

2009: A three-judge panel in the Coleman and Plata cases mandates that California reduce its prison population

2010: AG Brown appeals the panel's decision to the U.S. Supreme Court

2011-2019

Governor of California

2011: Supreme Court sides with lower court in Brown v. Plata, mandates that California reduce its prison population

2014: Voters pass Proposition 47, which downgrades some felonies to misdemeanors

2016: Brown signs a bill extending the deadline for inmates to apply for resentencing under the reductions enacted by Proposition 47

2016: Voters pass Proposition 57, which was endorsed by Brown. It allowed for the early release of nonviolent offenders

2017: Brown signs Senate Bill 620, striking mandatory sentencing enhancements for felonies committed with a firearm

2018: Brown signs bills ending cash bail, amending the felony murder rule and ending the practice of trying those under age 16 as adults

The policies have drawn their share of critics.

Marvel, the law enforcement officer lobby president, said the governor has participated in a recent push to "decriminalize crime in California."

The cash bail legislation has made strange bedfellows of civil rights groups, who say it could actually result in locking up more defendants, and the state's bail industry, which would cease to exist under the new law.

The bail industry has collected more than 570,000 signatures to have the bill go before California voters in a ballot question, a move that could put the law on hold until the 2020 election.

Jeff Clayton, executive director of the American Bail Coalition, calls the bill "a civil rights atrocity" and says he was surprised Brown signed it, in light of opposition from groups like the [American Civil Liberties Union](#).

The ACLU originally endorsed, then revoked support for the bill, saying it allows prosecutors to block a defendant's release pending trial, and gives judges wide discretion to grant such requests.

Clayton said he thought the bail bill was "right up [Brown's] alley," because it tried to be both soft on crime and hard on crime.

But scholars say there's a logic to Brown's policy.

Bazelon, the USF professor, said he's been consistently concerned with belt-tightening, and eventually realized efforts at decarceration "make more sense fiscally and also from a humanitarian perspective."

"What we saw in the '90s and the first 10 years of the 21st century is, those tough policies don't work, and we're paying tens of thousands of dollars to lock a person up until they die," Bazelon said.

Brown's reversal may also reflect the political climate of California, where many policy measures are decided by popular ballot, according to Weisberg.

"There was a time when tough-on-crime initiatives were popular," Weisberg said. "California just swings one way or the other. It's swinging in the reform direction right now. I don't know how stable it is."

Clayton said voters are due for a swing in the opposite direction, and noted that in addition to his group's cash bail initiative, the 2020 ballot will include a question on repealing other criminal justice reforms that Brown has backed.

However, voters didn't seem to change course during the 2018 election. They picked a successor for Brown, Gavin Newsom, more in tune with his recent criminal justice policies than the Brown of old.

And the reforms that have already occurred could end up **influencing other states**, according to Bazelon.

"California has outsized influence, because we have such an enormous population and such an enormous economy," Bazelon said. "I do think some states will look at what we've done."

She noted, for example, that Pennsylvania lawmakers are reviving a stalled bill that would end the felony murder rule there.

"I wonder if now they'll have more of the wind at their back. They can say, 'Here's another state that has passed this reform,'" Bazelon said.

Have a story idea for Access to Justice? Reach us at accesstojustice@law360.com.

--Editing by Brian Baresch.



Bail Or Jail? Calif. Justices May Reshape Detention Decisions

By **Cara Bayles** | December 16, 2018, 8:02 PM EST

In 2017, 63-year-old Kenneth Humphrey allegedly followed an elderly neighbor into his apartment, threatened to suffocate him with a pillowcase if he didn't cough up some money, then stole \$5 and a bottle of cologne, and left.

That small-time burglary has evolved into landmark litigation over California's bail policy. Now the state's Supreme Court will decide how often a court can deny bail and detain a defendant. It will also decide whether to uphold a mandate that judges consider a defendant's ability to pay at arraignment — a determination that could be moot, depending on the status of a new law that may nix money from the arraignment process.

At his bail hearing, Humphrey's public defender argued while the charge marked his client's third strike, he hadn't committed a crime in 25 years. Humphrey, who'd struggled with drug addiction since he was a teenager, had also been accepted to a treatment program for seniors. The judge, citing public safety and flight risk concerns, eventually lowered the bail to \$350,000, a cost that still doomed the indigent offender to sit in San Francisco County Jail.

That violated Humphrey's due process and equal protection rights under the 14th Amendment, California's First District Court of Appeal found. Its January order ruled that at arraignment, trial courts must "mak[e] findings regarding petitioner's ability to pay and alternatives to money bail" to comply with the U.S. Constitution.

The decision led not only to Humphrey's renewed hearing and his release with an ankle monitor to residential rehab, but also to judges statewide considering defendants' ability to pay at bail hearings.

The [California Supreme Court](#) took up the case in May, after the San Francisco District Attorney's Office asked it to review the ruling. Yet it wasn't interested in challenging financial considerations at bail hearings, which it called "necessary to satisfy due process and equal protection" in its opening brief.

Instead, District Attorney George Gascón asked the court to clarify an issue "left open" by the lower court: What to do with "individuals whose risk is so

high, detention remains necessary to protect public safety." Gascón said if the high court rules in his favor, it would "ensure we move away from money bail safely."

The case hinges on two state laws on pretrial detention. The first, Section 12 of the California Constitution, has for decades ensured a defendant's right to be released on bail, except in death penalty cases and charges involving violent felonies or threats of violence. The second, Section 28, was passed by a ballot question known as Marsy's Law 10 years ago. It established victim safety as a primary consideration in detention hearings.

The question before the high court now is which trumps the other.

The San Francisco District Attorney's Office argues the more recent law is controlling, and that public safety is always a valid reason to detain defendants. Doing so would ensure the equal protection that propped up the accused's rights to affordable bail also extends to a crime victim, according to the DA.

"A high amount of bail does not uniformly protect safety: a dangerous but indigent defendant will be incarcerated, but an equally dangerous but wealthy defendant can purchase his freedom," the opening brief said. "A court, however, need not resort to bail to ensure the safety of victims and the community. Other constitutionally sound mechanisms found within Sections 12 and 28 allow courts to deny bail in noncapital cases and preventatively detain dangerous defendants."

A spokesman for the DA's office declined to comment on the record about pending litigation.

The San Francisco Public Defender's Office countered that Section 28 only applies to death penalty cases, violent felonies and serious threats of violence — the crimes deemed carveouts to the right to bail under Section 12. Otherwise, the Marsy's Law referendum would have nixed the right to bail ensured by Section 12 altogether, according to Chesa Boudin, a deputy public defender who represents Humphrey.

"If voters are going to repeal a long-standing constitutional right, you have to tell them that's what they're doing," he told Law360. "There was virtually no reference to bail or pretrial release anywhere in the ballot material."

The case has drawn a slew of outside participants, many seeking to relitigate the ability-to-pay considerations.

Crime Victims United, a nonprofit organization that supports law enforcement and the victims of violent crimes, called the lower court's constitutional finding on defendant finances a "straw man," because the trial court could have detained Humphrey whether he could pay or not. The appeals court used that finding to rule on a constitutional question it need not decide, the group said.

The bar associations of San Francisco, Los Angeles and Santa Clara counties also weighed in, siding with Humphrey and contending that the [U.S. Supreme Court](#) has held that courts couldn't detain defendants accused of nonviolent crimes. The bar associations also argued policies that ignore a defendant's ability to pay flout the public interest, penalize the poor and are the reason that 64 percent of California's jail population has not been found guilty of a crime, but is merely awaiting trial.

But the future ruling by California's high court is unlikely to affect the mandate that judges consider a defendant's ability to pay, since both sides agree that's a constitutionally protected right.

Boudin said that if his side were to lose on the question of how to reconcile Sections 12 and 28, "that would mean judges can detain anyone they want, but can only do so after making the factual determinations and procedural considerations protected by the federal Constitution."

The ability-to-pay mandate seems relatively uncontroversial, with even industry groups like the Golden State Bail Agents Association voicing support for the requirement, saying it was preferable to an "unconstitutional" law the state legislature recently passed.

That law, Senate Bill 10, would end cash bail in California and replace monetary considerations with risk assessments. A challenge by the bail industry means the new law will likely be on hold until 2020, when it can go before voters as a ballot question.

If the referendum passes, it would render moot the Court of Appeal's mandate that judges consider defendants' ability to pay, according to both sides' briefs to the California Supreme Court. But the question before the high court could affect how frequently defendants are deemed dangerous and detainable, no matter what happens with the cash bail bill, both sides say.

"If anything, this court's ruling ... will shape how SB 10 should be understood, not the other way around," the San Francisco Public Defender's Office told the court.

Have a story idea for Access to Justice? Reach us at accesstojustice@law360.com.

--Editing by Katherine Rautenberg.

Human rights advocates, bail industry leaders fight to stop no cash bail law

[Sheyanne N Romero](#), Visalia Times-Delta

Published 2:05 p.m. PT Dec. 28, 2018 | Updated 2:05 p.m. PT Dec. 28, 2018



The proposal to eliminate the state's bail system as it exists is causing concern about increased crime and the shutdown of the bail industry. Sean Longoria



(Photo: Getty Images)

California's plans to reform bail have been put on hold.

Recently, bail industry leaders collected the more than 500,000 signatures needed to place Senate Bill 10 on the November 2020 ballot.

The referendum has been submitted to the Secretary of State's office for certification. Counties have until January to conduct a random sample of the signatures. If enough signatures — 63 percent — are certified, the bill will be on hold.

Bail industry leaders are confident the signatures will be certified.

The controversial public safety bill was signed into law in August. The new law — which would have taken effect on Oct. 1, 2019 — eliminates the cash bail system.

It is the first of its kind in the nation. But few celebrated the landmark bill.

Despite fundamental disagreements in many areas, civil rights groups, crime victims' advocates and the bail industry say Senate Bill 10 is flawed.

Several groups have come together in an effort to overturn the bill. They are joined by the more than 2,000 licensed bail agents in the state whose jobs are threatened by the bill.

"We have enough signatures to stop the bill from going into effect (Oct. 2019)," said Jeffery Clayton, executive director of American Bail Coalition.

Scott James, owner of Great Danes Bail Bonds, said it can be difficult to garner the needed signatures for a referendum but wasn't surprised by the outpouring of support.

"I knew a lot of people were upset," he said.

With the signatures in place, James said he is confident in the results of the 2020 election.

"I am 100 percent sure people will vote in favor to get rid of SB 10," he said. "I consider this a home run for the bail industry."

The signature campaign aimed to show voters that the new law is problematic and replaces California's current bail system with a system that might not be as effective, Clayton said.

"This is a reckless attempt to reform the states' bail system," he said, "SB 10 is the perfect example of last-minute deal-making by the Governor, the legislature and labor unions absent input from all stakeholders."

Opposition to the bill is growing, he added.

"I hope people wake up and realize there's a way to do bail reform that makes sense," Clayton said.

In a Human Rights Watch study, six California counties found that between 70 and 90 percent of misdemeanor and non-serious/non-violent felony defendants plead guilty and are then released, rather than having to wait until their first possible trial date.

"While difficult to quantify, it is certain that many innocent people are pleading guilty and many others are subjected to harsher sentences than they deserve, given the coercive nature of this choice," stated Advocacy Director Jasmine Tyler in an [August letter](#), written to Assemblymember Adrin Nazarian. "Judges and prosecutors know that pretrial detention pressures guilty pleas and moves court calendars faster, as people who are out of custody are more likely to assert their rights to litigate their cases."

Bail reform has become a hot topic throughout the nation.

Many say the cash bail system is unfair because it forces poor people to be stuck in jail, while the wealthy can "buy their way out."

In June, Assistant Presiding Judge Brett Alldredge, along with the probation department, began implementing a pretrial risk assessment tool.

The tool uses nine factors to determine a defendant's release including the risk of failure to appear, behavior, and violence. The defendant's age, charge and any prior law enforcement encounters are also taken into consideration.

Other California jurisdictions have implemented bail reform using a similar risk assessment tool that classifies a defendant into one of three categories.

Low risk means release from jail for free; medium risk means there is increased supervision and monitoring; and high risk means preventative detention — no release at all.

However, these risk assessment tools aren't always reliable.

Some violent offenders have been declared as safe, while others with seemingly minor blemishes on their records have been categorized as dangerous.

This means there are violent offenders being released for free, while others with minor blemishes on their records have been deemed “high risk” and are stuck in jail.

"Bail was not designed to punish the poor," James said. "The purpose is to ensure that defendants show up for court."

Under SB 10, it is unclear what will become of misdemeanor offenders who repeatedly fail to appear in court. Failure to appear is a misdemeanor — meaning a 12-hour maximum hold.

"What's going to make these offenders come back to court?" James asked. "Without bail, it's only going to get worse."

Another concern is the cost of the bill.

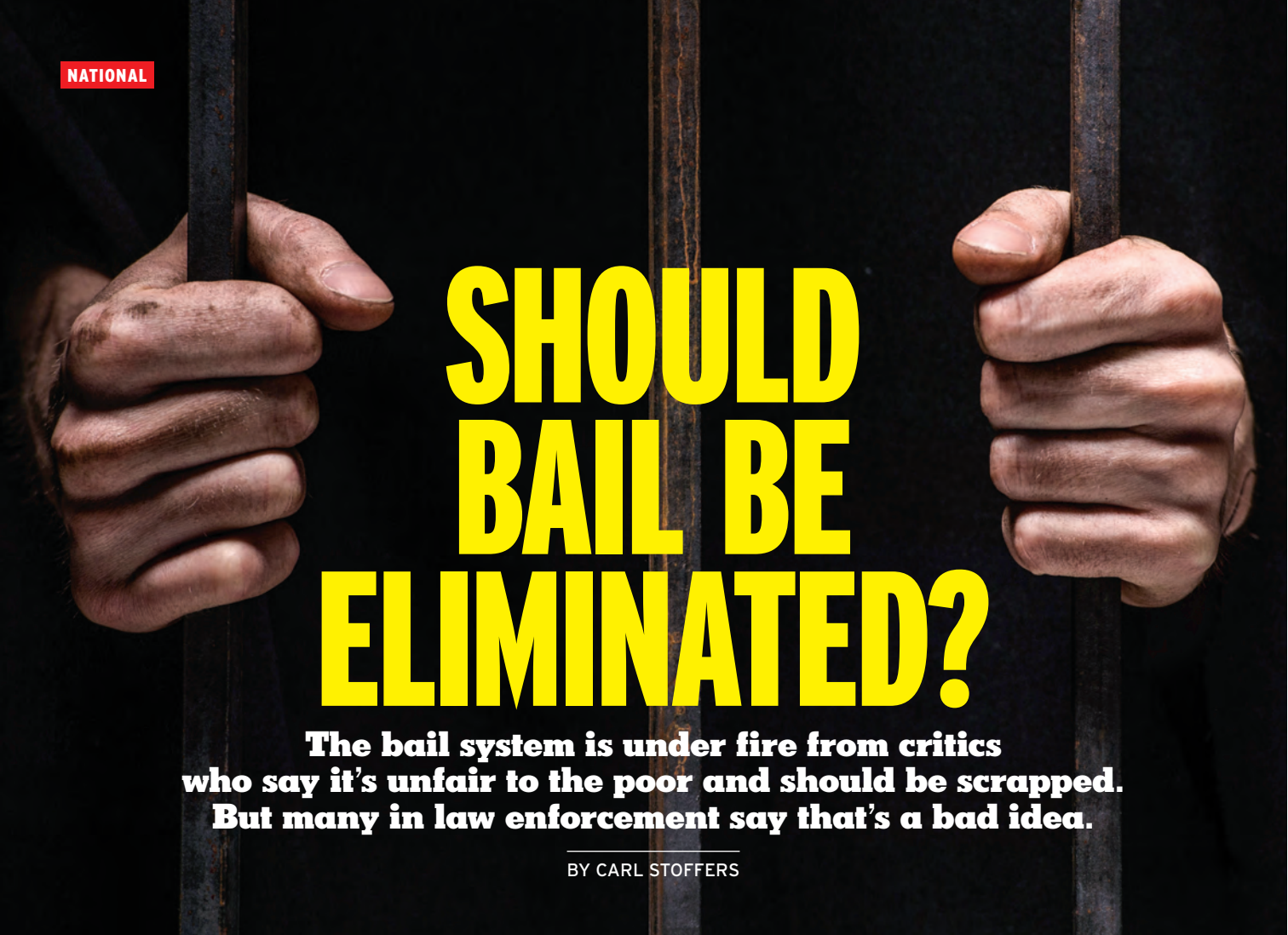
"This bill is extremely dangerous. Simply put, it places tremendous weight on risk assessments, and zero responsibility on the individual to even show up in court," said Assemblyman Devon Mathis (R-Visalia). "It provides zero funding or authority for individuals whose job it is to find those who skip their court dates to even bring them back."

Until 2020, Clayton said those who are driving the opposition will work to find a reasonable solution to the issues with cash bail.

"We are just looking for a solution," he said. "Can a compromise be made?"

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SHOULD BAIL BE ELIMINATED?

The bail system is under fire from critics who say it's unfair to the poor and should be scrapped. But many in law enforcement say that's a bad idea.

BY CARL STOFFERS

When Maranda O'Donnell, a 22-year-old single mother, was arrested in May 2016 in Houston, Texas, for driving with an expired license, the judge set her bail at \$2,500. O'Donnell, who was earning close to minimum wage as a waitress, couldn't afford to pay, so she spent three days in jail. She missed time at work, and her mother had to care for her 4-year-old daughter.

The same day O'Donnell was pulled over, 37-year-old David Dorsey was arrested by Houston police and charged with the more serious crime of felony burglary. Two courtrooms over from O'Donnell, Dorsey's bail was set at \$30,000, which he quickly posted, leaving jail the following morning.

The contrast between O'Donnell's and Dorsey's cases isn't uncommon. On any given day, there are approximately

450,000 people being held in U.S. jails awaiting trial. Those who can afford to post bail are released, while poorer suspects often spend days, weeks, or months behind bars as their cases work their way through the courts.

America's bail system, which dates to the nation's founding, is meant to ensure that suspects who are let out of jail don't flee while their cases are being decided. Those who aren't considered dangerous or a flight risk are given the option to post bail, which is paid to the court. As long as the suspect cooperates in the legal proceeding, the money is returned when the case concludes.

But critics say the system is inherently unfair to low-income people, and some states are now moving to reform it or doing away with cash bail entirely.

"The bail system determines who is free and who is in a cage based

solely on access to money," says Alec Karakatsanis, a civil rights attorney who has sued several states and cities over their bail policies. "It's about who's rich and who's poor."

The Eighth Amendment

The idea of bail has its roots in medieval England, where sheriffs used it to prevent criminal suspects from running off during the months-long wait for a judge to visit their villages. There have always been concerns about the fairness of bail. In the U.S., the Framers included a protection against "excessive bail" in the Eighth Amendment to the Constitution, borrowing directly from the English Bill of Rights.

Until about 40 years ago, bail in the United States was used almost exclusively as collateral to ensure defendants came to court to face charges. But a crime wave in the late

BLUESKYIMAGE/SHUTTERSTOCK.COM

1970s led many lawmakers and judges to take a tougher approach.

“Judges and politicians didn’t want to seem ‘soft on crime,’” says Lauryn Gouldin, a professor at Syracuse University Law School in New York, “so laws were passed allowing judges to set high bail to keep people in jail.”

The result was a sharp increase in the jail population. Even people facing charges for minor, nonviolent crimes were held for weeks or months because they couldn’t afford bail.

Lawsuits and Legislation

But that approach is now under fire. Class action lawsuits have been filed in Dallas, Chicago, and other cities, alleging that bail victimizes the poor.

In August, California became the first state to eliminate bail entirely; the law will take effect in 2019. Maryland and New Mexico also recently changed judicial rules to favor releasing people arrested for minor offenses without bail.

Last year, New Jersey eliminated bail for minor crimes like petty theft, simple assault, and trespassing. And for more serious offenses, judges now have more leeway to release defendants not considered flight risks. The new approach has resulted in a 20 percent reduction in the state’s jail population.

“Bail reform is about justice for everyone, regardless of income level,” says Stephen Sweeney, the New Jersey State Senate president. “We’ve reduced the number of people in jail without an increase in crime. It’s working exactly like we hoped.”

But not everyone is in favor of the changes. Many in law enforcement say that eliminating bail leads to a revolving door of arrest and release, and a serious risk to public safety.

“A cop can’t protect the public when the guy he arrests is released before the police report is filled out,” says James Stewart Jr. of the Fraternal Order of

Bail is meant to ensure defendants don’t flee from charges.

Police. “That only creates a bad guy who isn’t worried about the police.”

He points to the case of Kareem Dawson, who was arrested on domestic violence charges and released without bail twice last year in New Jersey. In February, Dawson murdered his girlfriend and then killed himself after a police chase.

“Because of bail reform, he was out on the street,” says Stewart. “If a judge had set bail, he wouldn’t have been able to pay and would have been in jail instead of out murdering this woman.”

But reform advocates argue that those cases are uncommon. They say that most people released without bail aren’t arrested again and come to court to see their cases through.

“The public safety argument is ridiculous,” says Karakatsanis, the civil

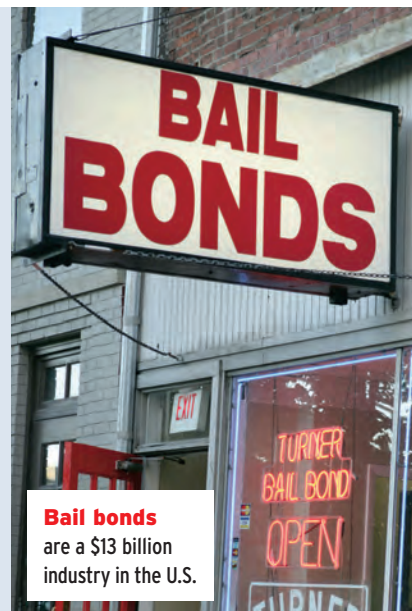
Bail Basics

The bail process can be confusing. Here’s how it typically works.

SETTING BAIL: When a person is arrested and charged with a crime, a judge considers whether the suspect is a danger to the community or a risk to flee. If the answer to both is no, the judge sets the amount of bail the suspect must pay to get out of jail.

PAYING THE COURT: If the suspect can afford to post bail, he or she pays the court. The money is returned when the case is over, as long as the suspect has cooperated.

BAIL BONDSMAN: A suspect unable to pay the full bail can hire a bail bondsman to post the money with the court. The suspect agrees to pay the bondsman a fee, usually 10 percent of the bail amount, and promises to appear in court whenever required.



SKIPPING BAIL: If the suspect makes all court appearances, the money is returned and the bondsman keeps the 10 percent fee. But if the suspect doesn’t appear, or “skips bail,” the bondsman loses the full bail amount. In those cases, a bondsman will often try to track down the suspect and bring him or her to court in order to avoid losing the money.

rights attorney. “Most people that can’t afford bail aren’t violent criminals—they’re simply poor.”

After Maranda ODonnell’s arrest for the expired license, she filed a lawsuit against Harris County, Texas, where Houston is located. In April 2017, a federal judge decided the county’s bail system was unconstitutional on the grounds that it treated poor and wealthy defendants differently, in violation of the equal protection clause of the 14th Amendment.

In February, a federal appeals court upheld the ruling, and experts predict the decision will encourage more challenges to the nation’s bail systems.

“There’s momentum throughout the country heading in the direction of major change,” says Gouldin, the Syracuse University law professor. “This wave of bail reform is going to continue, whether it’s through new legislation or lawsuits.” ●

San Jose Mercury News

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Law ending cash bail in California halted after referendum qualifies for 2020 ballot

SB 10 won't start in October as planned; final version divided legislators and civil-rights groups who initially supported it



Ray Jayadev, director of Silicon Valley De-Bug, speaks during a bail-reform rally in front of the Santa Clara County Hall of Justice, Tuesday, Feb., 20, 2018, in San Jose, Calif. The event was coordinated with similar gatherings around the state calling attention to prospective legislation that would decrease the number of people in jail solely because they cannot afford bail. (Karl Mondon/Bay Area News Group)

By **ROBERT SALONGA** | rsalonga@bayareanewsgroup.com and **NICO SAVIDGE** | nsavidge@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: January 17, 2019 at 3:16 pm | UPDATED: January 18, 2019 at 4:08 am

A referendum to overturn a new law to end bail in California has qualified for the 2020 ballot, halting the landmark reform that has since soured its former supporters and galvanized a bail industry that bankrolled the repeal campaign.

Senate Bill 10 was set to go into effect in October after then-Gov. Jerry Brown signed it last fall, but now it must be approved by a majority of voters before it can take effect.

Bail industry groups, who had immediately launched an effort to gather signatures for a repeal measure, welcomed the news after Secretary of State Alex Padilla confirmed Wednesday they had exceeded the 402,468 projected valid signatures to qualify for the November 2020 election.

“In passing this misguided bill, the Legislature ignored not only public safety and justice, but a fundamental of the criminal justice system — defendants must appear at trial for justice to be served,” Cesar E. McGuire, director of Bail Hotline Bail Bonds, said in a

statement. “Fortunately, our constitution has a referendum process, to correct the Legislature when they fail to do their job.”

The final version of the bill — which eliminates the state money bail system and replaces it with judges using a risk-assessment system — lost support from many of its initial architects and sponsors by the time it was signed in August. That included the ACLU and San Jose-based Silicon Valley De-Bug, who argued that the revised law will unfairly skew against people of color and would increase the number of people jailed while awaiting trial, veering away from their core goal of reforming a criminal-justice system that jails thousands of people simply because they can’t afford bail.

With some early advocates now opposed to the law in its current form, they ironically have become aligned with bail bonds firms, who have pivoted from a public-safety platform to one about civil rights. That has irked advocates who said the people who once vilified them before the bill signing are now hijacking their message in a cynical ploy to preserve their industry.

“We are not on the same team. They’re re-positioning themselves to be part of this civil rights movement, and it’s laughable,” De-Bug director Raj Jayadev said. “It’s still a predatory industry, and them trying to be part of the de-carceration movement, people see through it.”

“Letting them dictate terms could set a very dangerous precedent with implications well beyond this,” he added. “This has to be driven by the right people for the right reasons.”

Jeff Clayton, executive director of the American Bail Coalition, said his group is expecting to spend anywhere between \$5 million and \$15 million on the referendum campaign and called on critics to focus on eliminating a law that allows judges and prosecutors to “lock up whoever they want without bail.”

“The only debate we’re having right now is: Is the current system worse than the alternative? And the answer is, no, it’s not,” Clayton said. “If they don’t get on board, and they would prefer a system of algorithm-based preventative detention, that’s what they’re going to get.”

Bay Area Assemblyman Rob Bonta, D-Alameda, one of the bill’s authors, said the end of cash bail is an eventuality.

“The money bail industry is desperately trying to hang on and buy themselves more time. But even they see the writing on the wall. Money bail is wrong. It’s unjust. It doesn’t promote public safety and it ruins lives,” Bonta said in a statement Thursday. “When the time comes for voters to make their decision, I feel strongly that Californians will see through the bail industry’s transparent effort to prop up an unsafe, unjust, unfair, predatory for-profit system that hurts people.”

According to SB 10, a person whose risk to public safety and risk of failure to appear is determined to be “low” would be released with the least restrictive non-monetary conditions possible. “Medium-risk” individuals could be released or held depending on local standards. “High-risk” individuals would remain in custody until their arraignment, as would anyone who has committed certain sex crimes or violent felonies, is arrested for driving under the influence for the third time in less than 10 years, already under supervision by the courts or has violated any conditions of pretrial release in the previous five years.

The risk-assessment system was added later, and was backed by Brown and state Supreme Court Chief Justice Tani G. Cantil-Sakauye, who called the bill’s signing “a transformative day for our justice system.” A spokesman for the court told this news organization they were prohibited from commenting on the referendum.

Kate Chatfield, policy director for Re:store Justice, voiced concern about giving the judges too much power in deciding who should be released and would rather see officials “return the problem to the Legislature to fix it” rather than send it to the ballot box.

“I’m not supportive of a referendum that would return to the status quo, return to the cash bail system,” Chatfield said. “I’m very concerned about the risk-assessment tools that would be used or are being developed, continuing the racial disparities and the economic disparities that are endemic to our criminal legal system.”



Robert Salonga

Robert Salonga is a Pulitzer Prize-winning reporter covering criminal justice and public safety for The Mercury News. A San Jose native, he attended UCLA and has a Master's degree in journalism from the University of Maryland. He previously reported in Washington, D.C., Salinas and the East Bay, and is a middling triathlete. Reach him the low-tech way at 408-920-5002.

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Nico Savidge

Nico Savidge is a reporter covering courts, crime and law enforcement for The Mercury News. He grew up in Berkeley, then lived in Wisconsin for nine years before returning to the Bay Area, making him both a local and a transplant. A graduate of the University of Wisconsin, he previously wrote for EdSource, the Wisconsin State Journal and The Janesville Gazette. He spends his time outside of work re-learning the Bay Area and losing his tolerance for cold weather.

[Follow Nico Savidge @NSavidge](#)

Monday, January 21, 2019

Appeal on monetary bonds to be heard

- By Phaedra Haywood

A federal appeals court in Denver is scheduled to hear oral arguments Tuesday in the New Mexico bail bonds industry's legal challenge to reforms that essentially eliminated monetary bonds in New Mexico in the last few years.

The Bail Bond Association of New Mexico and five state lawmakers filed the class action lawsuit in 2017, contesting the constitutionality of new rules governing the imposition of monetary bonds after voters approved a constitutional amendment that made it legal for judges to hold dangerous defendants without bond but illegal to keep indigent defendants in jail simply because they couldn't afford bail.

The industry claims the new rules, which greatly reduced the imposition of money bonds on criminal defendants, violate defendants' protected rights to reasonable bond.

U.S. District Judge Robert A. Junell dismissed the lawsuit in 2017, saying it was based on a misinterpretation of the law and lacked legal merit.

"While the United States Constitution and the New Mexico Constitution forbid excessive bail," he wrote, "they do not guarantee an absolute right to bail or money bail."

Junell even sanctioned Albuquerque lawyer A. Blair Dunn for filing the case, saying it was frivolous and that Dunn — who was a candidate for New Mexico attorney general — appeared to have filed it for political reasons.

The U.S. Court of Appeals for the Third Circuit recently disallowed a similar challenge to New Jersey's no-money bond system, finding there is no right to monetary bail.

But plaintiffs are forging ahead, hoping in part that the U.S. Supreme Court might agree to examine the issue in the future.

"A favorable decision for the plaintiffs by the [Denver-based] 10th Circuit... will almost certainly guarantee a trip to the U.S. Supreme Court," the American Bail Coalition said in a news release Monday. "If the plaintiffs were to lose the case, they might also appeal to the Supreme Court. The highest court in the land has not touched the issue of bail in more than 30 years."

Dunn said Monday his clients are "more likely than not" to appeal the case to the high court if they lose in Denver but won't decide until after reading the court's ruling.

"If we don't lose everything, and we do pick up some points... it may warrant making that decision to drive legislative change in New Mexico rather than expending the resources to go to the Supreme Court," Dunn said.

Administrative Office of the Courts Director Arthur Pepin said in an email Monday the lawsuit is an attempt by the bail bond industry to "turn back the clock on bail reform efforts approved by voters that enhance justice, fairness and public safety."

"Because New Mexico has moved away from a money-based bail system, dangerous defendants no longer can buy their freedom with a bail bond despite the risk they could pose to the safety of our citizens," Pepin said. "A ruling over a year ago by a federal district court judge recognized the lawfulness of New Mexico's reform of the pretrial justice system."

THE DENVER POST

NEWS > CRIME & COURTS

Bail system on trial in Denver's 10th Circuit Court of Appeals as states push for reform

Colorado lawmakers to consider several bills concerning pre-trial release this session

By **ELISE SCHMELZER** | eschmelzer@denverpost.com | The Denver Post
January 22, 2019 at 6:00 am

A federal appeals court in Denver will hear arguments Tuesday in a case that could shape the future of bail reform in states across the country — including Colorado, where lawmakers are preparing to consider a number of bills concerning the release of defendants before trial.

The U.S. Court of Appeals for the 10th Circuit will hear a case from New Mexico in which plaintiffs argue that criminal defendants have a constitutional right to post monetary bail, which the state eliminated in many cases. Monetary bail allows a defendant to leave jail after paying money to the court or to third-party bail bondsmen as collateral that they will appear for future court hearings.

The change was meant to ensure that poor defendants weren't stuck in jail simply because they couldn't pay bond, but it had the unintended consequence of locking people up who can afford bond while they wait for an assessment as to whether they should be released and for a hearing before a judge, according to the class action lawsuit at the root of the legal challenge.

The arguments come as Colorado and many other states consider changes to the bail system and attempt to eliminate financial burdens for defendants not yet convicted of a crime.

Colorado state lawmakers are expected to consider several bills regarding bail reform, said Denise Maes, public policy director for ACLU of Colorado. But the bills will not focus on eliminating monetary bail entirely and will instead focus on promoting presumptive release — or release without paying any money — for low-level crimes, she said.

Sometimes simply eliminating monetary bail can keep people in jail longer, as illustrated by the New Mexico case, she said.

"Just because you get rid of cash bail doesn't mean you solve the problem," Maes said.

State and local governments across the country have grappled with how to improve pre-trial release practices as jail populations rise, Maes said.

Denver last month announced it would [no longer charge defendants for GPS-tracking ankle monitors](#) before their trial. The city [also eliminated many of its pre-trial fees](#) after settling a lawsuit in December filed on behalf of a man who sat in jail for five days because he couldn't afford a small administrative fee. The chief justice of Colorado's Supreme Court [formed a commission in March to study bail procedures in the state](#).

The majority of people in jail are considered innocent because they have not yet been convicted of any crime and are awaiting trial, she added.

"It's risen to such a crisis that I think we now have to go to the courts to do something about it," Maes said.

The decision from the Denver-based 10th Circuit in the New Mexico case could help set boundaries for other states as they consider reforming their bail systems, said Richard Westfall, a Denver attorney who is arguing on behalf of the case's plaintiffs.

The lawsuit stems from the July 2017 arrest of 61-year-old Darlene Collins, who sat in a New Mexico jail for almost five days after she was arrested on suspicion of aggravated assault. Her family pulled together money to post a bail bond to get Collins out of jail, but the new rules from that state's highest court prevented the courts from setting a bond amount in her case without a risk assessment or a hearing before a judge.

So instead of almost immediate release, Collins remained in custody for five days due to a combination of her poor health, a holiday weekend and the elimination of bonds set in the jail, Westfall said.

Collins' attorney filed a class-action lawsuit in 2017 alleging the woman's constitutional rights were violated because she was not given the chance to bond out of jail.

The suit notes that the Eighth Amendment forbids "excessive bail" and that Collins' attorneys believe that means that the option for bail must exist.

"What the New Mexico Supreme Court may not do is restrict the liberty of presumptively innocent defendants without offering the one alternative to substantial pre-trial deprivations that the Constitution expressly protects — monetary bail," the original lawsuit states.

The number of bail bonds posted through third-party bondsmen in New Mexico's busiest court dropped 84 percent in the year after the state's Supreme Court changed the rules, [according to the Albuquerque Journal](#). The number of people in jail on bond also dropped significantly.

A federal appeals court in New Jersey, which has a similar law eliminating monetary bail in most cases, [found in July that there was no constitutional guarantee](#) that a defendant be allowed to use a corporate bond to get out of jail before trial.

There would be a "strong likelihood" that the U.S. Supreme Court would hear the New Mexico case if the Denver appeals court agrees with Collins and her attorneys and contradicts the New Jersey ruling, Westfall said. The highest court in the country would be very likely to resolve the discrepancy in the two appellate courts' opinions, Westfall said.

"That's a major motivating factor for the U.S. Supreme Court," he said.

The U.S. Supreme Court has not considered questions regarding bail in three decades, said Jeffrey Clayton, executive director of the American Bail Coalition, which represents the bail bond industry.

“They haven’t really talked about this in so long, I think there’s a chance that some of these cases could get there,” Clayton said.

THE SACRAMENTO BEE

The fate of California's cash bail industry will now be decided on the 2020 ballot

BY MICHAEL MCGOUGH

JANUARY 17, 2019 11:58 AM,

UPDATED JANUARY 17, 2019 12:04 PM



This is part of the push against the bail reform bill on August 21, 2018, by Senator Jim Nielsen, a Republican from Tehama, California, on the CA Senate floor.
By California State Senate

A law passed in August that would have abolished cash bail in California starting later this year will instead appear on the November 2020 ballot, representing a big victory and relief for the state's more than 3,000 bail bondsmen faced with the prospect of their career being outlawed.

Proponents of the reform say it would help reduce racial and economic discrimination they say is inherent in California's cash bail system. But a referendum effort well surpassed the necessary number of signatures to push the law, Senate Bill 10, to a direct voter decision before it can take effect, state officials certified Wednesday.

[Senate Bill 10 would have abolished California's cash bail system effective Oct. 1.](#)

In its place, the state would adopt a risk assessment-based bail system, which would determine an individual's likelihood of returning for court appearances. The law calls for pretrial assessments to categorize arrested persons as low, medium or high risk.

Needing 365,880 signatures by registered voters within 90 days, a coalition called Californians Against the Reckless Bail Scheme picked up more than 575,000 signatures in 70 days to put SB 10 on the November 2020 ballot, the American Bail Coalition announced in a news release.

“We knew with the momentum against this law from people on all sides of the issue, getting on the ballot would not be the problem,” Jeff Clayton, executive director of the American Bail Coalition, said in a prepared statement. “Now we can move on toward defeating this reckless law.”

The successful referendum means cash bail will stick around until at least the November 2020 vote, buying more than a year for the bail bond industry regardless of the ballot outcome.

The American Civil Liberties Union is among organizations that have called for bail reform. A joint statement Thursday by the executive directors of the ACLU’s three California affiliates said cash bail profits off inequality.

“There is no denying that the bail industry hurts California families,” the statement reads. “Its existence is antithetical to our values of justice, fairness, and racial equity. By charging people nonrefundable fees for pretrial release, the bail industry has made billions of dollars off the backs of individuals and families in dire circumstances, especially people most affected by racial and economic inequities in our society and the criminal justice system.”

Sacramento’s storied bail bondsmen disagree, of course.

“The people earn the right to use bail insurance,” said Greg Padilla, owner of Greg Padilla Bail Bonds in Sacramento. “They have to go out and commit a crime, don’t they?”

Padilla co-owns Greg Padilla Bail Bonds with his son, Topo Padilla. The agency has been in business more than 40 years.

“Bail has been around for centuries, and bail is not mandated by law like car insurance and health insurance,” Topo said. “So by law, we have to have those — you have a car, you’ve gotta have car insurance. Bail is something that somebody puts themselves in the position to need. Less than 20 percent of the people that are arrested have to post bail. Eighty percent of the people don’t have to post bail. This legislation was passed with emotion and outright false statistics.”

SB 10 was signed into law by then-Gov. Jerry Brown on Aug. 28. As of then, California had 3,200 licensed bail bondsmen, and the industry employed more than 7,000 people total, California Bail Agents Association Vice President Maggie Kreins told The Bee at the time.

Topo Padilla, who also serves as president of Golden State Bail Agents Association, said the bail industry has not changed much in Sacramento since August, but in other California counties, pilot programs are already in place.

“And I am confident these programs are going to fail before they succeed,” he said. “Because this was an unfunded mandate. There was money to put the program together, but no program to operate it. ... Other than the taxpayers, there’s no funding mechanism.”

Topo Padilla noted that the District of Columbia uses the same risk assessment program SB 10 calls for. Extrapolating from the population there and what he says is a \$56 million budget, Topo estimated that a similar program in California would cost about \$3.2 billion.

“Fiscally, they didn’t have the money,” he said. “Other than the taxpayers, there’s no funding mechanism.”

The American Bail Coalition alleges that risk assessment-based bail systems are inaccurate and that though they use algorithms intended to remove racial and gender biases, they have appeared to make these biases worse.

“SB 10 would cost billions of dollars to implement and does not contain any provision to guarantee defendants would appear in court,” the American Bail Coalition said in a news release. “In addition, it calls for use of a controversial risk assessment tool to determine whether or not a person accused of a misdemeanor is to be detained or released.”

SB 10 was co-authored by state Sen. Bob Hertzberg, who has defended the legislation.

Topo Padilla took issue with statements Hertzberg made this week [reported by the Los Angeles Times](#) that suggested the risk assessment-based bail reform would help decrease the number of innocent people in jail.

“If that is the case, if there’s hundreds and hundreds of people in our county jails that are innocent, then his legislative effort needs to be focused on our law enforcement,” Topo said. “But that’s not the case.”



Greg Padilla and Tony “The Tiger” Lopez are among many bail bondsmen in Sacramento who are against SB 10, a new law that will eliminate California’s bail bonds industry in October 2019.

By [Michelle Inez Simon](#) | [Randall Benton](#)



Bail reform law on hold as referendum heads for November 2020 ballot



Bail bonds businesses line the block across the street from the Hall of Justice in San Francisco.
(Joel Angel Juárez/ Special to S.F. Examiner)

By Bay City News on January 17, 2019 3:36 pm

A historic California law that would replace cash bail with a risk assessment system has been put on hold because a referendum challenging it qualified for the November 2020 ballot.

Secretary of State Alex Padilla announced Wednesday that the referendum sponsored by the American Bail Coalition, a bail bond agents' trade association, had enough signatures for the ballot.

The qualification automatically suspends the new law until the election is held. The California Money Bail Reform Act had previously been scheduled to go into effect on Oct. 1 of this year.

Bail coalition executive director Jeff Clayton said in a statement, "Now we can move on toward defeating this reckless law."

In opposition, the directors of the California branches of the American Civil Liberties Union said, "We must reject the wealth-based, two-tiered system of justice that the bail industry seeks to preserve."

Separately, two challenges to the money bail system are pending in the California Supreme Court and in federal court in Oakland.

A ruling by one or both of those courts could potentially result in a modification of the money bail system before 2020.

In the cash bail system, people who are arrested and awaiting a criminal trial are released if they post a cash bond in an amount specified in a bail schedule set by the local superior court. People can pay the bond either with their own money or through commercial bail agents, who typically charge a 10 percent fee for putting up the cash.

The new law would use a risk assessment tool to determine whether arrestees are a low, medium or high risk of failing to appear in court or endangering the public. People accused of violent crimes or threats of violence would usually be denied release, subject to review by a judge.

Opponents of the current system contend it is unfair to low-income people and favors well-to-do defendants who can afford to pay.

The ACLU directors said the system “is antithetical to our values of justice, fairness, and racial equity.”

“By charging people nonrefundable fees for pretrial release, the bail industry has made billions of dollars off the backs of individuals and families in dire circumstances, especially people most affected by racial and economic inequities in our society and the criminal justice system,” they said.

The bail industry coalition claims that assessment tools are inaccurate and could result in dangerous people being released.

The referendum needed 365,880 signatures, or 5 percent of the total votes cast for governor in the November 2014 election, to qualify for the ballot.

-Julia Cheever, Bay City News



Law Reforming California's Bail System Is In Limbo



DOUG SOVERN

JANUARY 17, 2019 - 5:34 PM

The elimination of cash bail was supposed to be a dream come true for advocates of criminal justice reform.

Last summer, then Governor Jerry Brown signed S.B. 10 to ban the cash bail system and change how judges determined an inmate's pre-trial fate.

But thanks to the efforts of the bail bond industry, the law will not go into effect as planned this October.

The American Bail Coalition, led by Jeff Clayton, secured enough signatures to let voters decide the law's future in a referendum on the November 2020 ballot.

Clayton's group needed to gather 365,000 valid signatures, and not only met but exceeded the requirement by more than 200,000.

"It's not just to save jobs for the bail industry," Clayton insisted. "It's more to prevent a system of preventative detention and denying the right to bail in California. We think that's going to lead to more jails in California, rather than less."

Reform advocates point out that the money bail system treats the wealthy differently, potentially setting free dangerous criminals who have the money for bail, while those accused of even low-level, non-violent crimes languish in prison for lack of funds.

Under the bill, written by East Bay Assemblyman Rob Bonta, judges would have more latitude to determine when a prisoner could be released.

“It will be based on an individual’s full set of circumstances, their risk to the public, their risk of flight,” Bonta told KCBS Radio. “And that’s the right thing to do, that’s the better thing to do.”

Bonta's bill had strong support from Chief Justice Tani Cantil-Sakauye and Sen. Kamala Harris, who has introduced a similar bill at the federal level.

“Whether someone is detained before trial should be determined by whether they’re a risk to their community and society, not whether they’re rich,” said Harris.

But the cash bail ban was fiercely opposed by the bail bond industry, who feared the loss of many thousands of jobs and hundreds of millions in revenue, as well as many law enforcement leaders.

Perhaps surprisingly, the American Civil Liberties Union, joined the opposition to the cash bail ban, saying the new law gives judges too much power.

“Rather than just set bail, and let the system play itself out, they’re actually going to detain a huge number of people in jail with no bail,” said Clayton. “Prosecutors, under this law, can detain anyone they want for up to eight days, with really little explanation other than filing a motion and accusing somebody of being dangerous.”

The referendum leaves the law in limbo until voters have their say next year.

Written by Jordan Bowen.



Effort to Overturn Law Eliminating Money Bail System Qualifies For Ballot

POSTED BY CONTRIBUTING EDITOR ON JANUARY 16, 2019 IN CRIME

An effort to overturn the law overhauling the state's monetary bail system has qualified for the November 2020 ballot, Secretary of State Alex Padilla announced Wednesday.

Provisions of SB 10 are suspended with the referendum qualifying for the ballot.

Under SB 10, people arrested on suspicion of criminal offenses can be held in jail only if they pose a significant risk to public safety or risk missing their court date, according to Sen. Bob Hertzberg, D-Van Nuys, one of the bill's co-authors.

Opponents of the law needed to submit valid signatures from 365,880 registered voters — 5 percent of the total votes cast for governor in the 2014 general election — to qualify the referendum to for the ballot.

A referendum can qualify via random sampling of petition signatures if the sampling projects a number of valid signatures greater than 110 percent of the required number. The initiative needed over 402,468 projected valid signatures to qualify by random sampling, and it exceeded that threshold Wednesday, Padilla said.

Backers of the referendum say they gathered 576,813 signatures in 70 days.

"We knew with the momentum against this law from people on all sides of the issue, getting on the ballot would not be the problem," said Jeff Clayton, executive director and policy director of the American Bail Coalition, a trade association of national bail insurance companies. "Now we can move on toward defeating this reckless law."

Hertzberg expressed confidence voters would support the law.

"SB 10 was supported by all three branches of government, reform advocates, public safety officers and workers," Hertzberg said.

Instead of setting money bail amounts, SB 10 allows for non-monetary release conditions for eligible defendants, such as GPS monitoring or home detention with electronic monitoring.

The law gives judges discretion to determine which defendants pose a safety risk to the public or might potentially fail to appear in court and should remain jailed.

The law requires local courts to set up systems to identify individuals who are a risk to public safety or at risk of missing their court date, but allows jurisdictions to dictate the specifics, rather than taking a one-size-fits-all approach.

The result would be that a “vast majority” of people would be released from jail within 12-24 hours of their arrest, according to the bill’s sponsors.

EFFORT TO OVERTURN LAW ELIMINATING MONEY BAIL SYSTEM QUALIFIES FOR BALLOT was last modified: January 17th, 2019 by Contributing Editor

The New York Times

In California, Criminal Justice Reform Offers a Lesson for the Nation



San Quentin State Prison in California. Several new laws in the state seek to reduce the number of people who are incarcerated and ease the harsh penalties imposed for some crimes.

Max Whittaker for The New York Times

By Tim Arango

Jan. 21, 2019

LOS ANGELES — A police officer is shot dead in Whittier by a [gang member](#). A mentally ill homeless man walks into a steakhouse in Ventura, Calif., and [stabs](#) a man to death in front of his family. In Bakersfield, a man angry over his divorce goes on a [shooting rampage](#), killing his ex-wife and four others.

In the aftermath of these high-profile killings, some police officers, district attorneys and politicians were quick to use them as examples to show that criminal justice reform had let dangerous people onto the streets.

It turned out they were wrong. Not one of the crimes was directly linked to any of several new laws that seek to reduce incarceration and lower harsh penalties. But the cases show how muddled the debate over criminal justice has become, even in this liberal state.

Over the last decade, California has been at the forefront of the nation's efforts to reduce mass incarceration, in part because the state was forced by the courts to lower the population of severely overcrowded prisons. California, once a byword for get-tough-on-crime policies like its three-strikes law enacted in the 1990s, has let thousands of inmates out of prison or jail.

Overall crime rates, meanwhile, are at historic lows, with levels not seen since the 1960s. Yet some categories of crimes, like theft, have ticked up, feeding into a narrative by opponents of criminal justice reform that California's new measures have gone too far.

Now that President Trump has signed into law [a federal criminal justice reform bill](#), California's experience, and the political fallout, is especially instructive. Experts are finally starting to study the effects on crime rates.

At the same time, powerful forces are lining up in an attempt to roll back some of the changes and, supporters of the new laws fear, return California to its get-tough-on-crime days.

Police unions have put up hundreds of thousands of dollars to support a ballot measure to expand the category of crimes that can be charged as felonies. And the grocery store chain Albertsons has also contributed to the effort, blaming the changes for a rise in shoplifting. Big bail companies have raised \$3 million to overturn a recent California law that ends the cash bail system, which critics have long said unfairly targets the poor.

Jerry Brown, the former governor, left office recently with a \$15 million campaign war chest, and has said some of that money can be used to defend his criminal justice legacy by trying to defeat the ballot measures.

The data on crime, and what it says about reforms, has been contested. Small upticks in some types of crime in some areas has muddled the picture. And Californians may well be confused about what to believe: One day, headlines say that crime is up; the next, that crime is down. For instance, violent crime rose in California in 2012 and between 2015 and 2017, allowing opponents of the laws to point to increases, even as scholars say arguments about criminal justice policies should not be based on short-term fluctuations — and that overall crime rates are declining.

Activists see parallels in the strategies of opponents of more lenient sentencing laws in California and the rhetoric on crime at the national level. The former attorney general, Jeff Sessions, warned early last year about a “staggering increase in homicides.” Violent crime had ticked up in 2015 and 2016 after a long decline, but when F.B.I. statistics for 2017 were released — after Mr. Sessions's warning — they showed that violent crime had gone down again.

One of the most controversial changes in California was a law passed last year to end cash bail. Initially anticipated by liberal activists as a significant step to end the practice

of holding poor defendants in pretrial detention because they could not afford bail, the final version of the law has been disavowed by many of its early supporters. That is because, activists say, the law gives judges more discretion to hold the accused before trial. The new system will also use [algorithms](#) to assess whether a defendant is a flight risk or might commit another crime — tools that activists say are biased against people of color.

“It gives judges basically unlimited power without due process,” said John Raphling, a senior researcher at Human Rights Watch in Los Angeles. The risk assessment tools that judges would use, he said, “embed racial bias.”

The controversy over the bail law has essentially placed the bail industry and civil liberties advocates like the A.C.L.U. on the same side. But it is the bail industry that has backed a ballot measure to overturn the law, which has received enough signatures to go before California voters in 2020.

In pushing the measure, the industry has offered contradictory arguments, sometimes suggesting that eliminating cash bail would mean more criminals on the streets, and other times adopting the argument of the liberal activists that the new law could, in fact, end up locking up more people in a manner that would be unfair to poor African-Americans.

Jeff Clayton, the spokesman for a coalition of bail companies backing the ballot proposition, said the issue would be “focus grouped and polled” to figure out what the right message should be for advertisements in the run-up to the vote in 2020.



Bail-bond companies in Los Angeles. A recent California law has abolished cash bail for defendants awaiting trial in the state's courts, a practice that critics said unfairly burdened the poor.

Mario Tama/Getty Images

In one of the first [academic studies](#) on the effects of California's criminal justice reforms on crime rates, Bradley J. Bartos and Charis E. Kubrin, of the University of California at Irvine, found no links between Proposition 47 — a ballot measure enacted in 2014 that reduced some drug crimes and thefts to misdemeanors — and violent crime. The study, published in the journal *Criminology and Public Policy*, found that larceny and auto thefts seemed to have increased moderately after the measure was enacted, but said other factors may have been to blame and that more study was needed.

“At the time I was hearing so many claims about what Prop 47 was doing to crime in the state,” Ms. Kubrin said. “Prop 47 has nothing to do with violent crime.”

Even so, her research was challenged by law enforcement groups. A [statement](#) released by the Los Angeles Association of Deputy District Attorneys attacked the study, saying that because crime had ticked up after Proposition 47 was enacted, the measure had “arguably failed.”

Links between criminal justice policies and crime rates have long been tenuous. There are almost endless factors that can lead to crime, including poverty and drug addiction.

“The literature on how policing and levels of punishment relates to actual crime is so disputed,” said Rob Smith, executive director of the Justice Collaborative.

Mr. Smith said that it was “important to understand that we are in a historic decline.”

“So these year-to-year fluctuations don't really tell you much,” he said.

While pointing to short-term increases in certain crimes in recent years, some — mainly law enforcement personnel and victims' rights advocates — have also been quick to seize on highly publicized crimes as evidence that California's policies have become too lenient.

In one example, John Cox, the Republican businessman who lost the race for governor, in several instances pointed to the death last year of Anthony Mele, a 35-year-old man who was killed in the steakhouse in Ventura by a homeless man.

Mr. Cox said he believed the system was too lenient and that “plea bargains” had allowed too many criminals onto the streets. “I think of Anthony Mele, a young man who was murdered in cold blood by a guy who was out,” he said.

Richard Simon, the senior deputy district attorney in Ventura who is prosecuting the case and who believes California has become too liberal on criminal justice, said the suspect, Jamal Jackson, was not on the streets because of any recent changes.

Similarly, in the killing of the police officer in Whittier in 2017, law enforcement initially blamed criminal justice reform, saying the suspect would not have been on the streets had it not been for new sentencing guidelines. But the California Department of Corrections and Rehabilitation issued a statement saying the suspect was not released early as a result of justice reforms. And an [investigation](#) by The Los Angeles Times and The Marshall Project revealed that missteps by Los Angeles County and probation

officials — who were overseeing the suspect after his release from prison — had led to him being on the streets.

Another case that has galvanized opponents of the justice overhaul was a homicide last year in Fresno, in which a man was cited — but not arrested — for methamphetamine and then shortly after killed a young man in a robbery attempt. The [mother](#) of the victim and law enforcement officers have blamed the reforms, saying that under old laws the assailant would have been arrested and off the streets.

But activists and supporters of the new sentencing measures in California have [pushed back](#). They note that no new law precludes an arrest for possessing drugs. And in the Fresno case, they say there were other circumstances, like the presence of guns in the hotel room where they found the suspect with meth hours before the killing, that could have justified an arrest.

Advocates worry that it is only a matter of time before a high-profile crime will be linked definitively to criminal justice reforms, giving opponents a [Willie Horton-style example to stoke fear](#). They say that would hardly justify a return to a harsher system — that a free society should not lock up lots of people, at great cost, on the worry that one may commit a horrible crime.

“We all want to live in a society where you can walk from your house to work or the bus station or the subway and feel and be safe,” said Mr. Smith of the Justice Collaborative. “And the reality is across California and across the country we are safer than almost at any time in history.”

California’s reform effort began in earnest in 2011, with a law that shifted many state prison inmates to county jails, and was followed by other measures approved by voters that reduced penalties for certain crimes and allowed for more inmates to be released early for good behavior. The high mark for California’s prison population was 2006, with about 163,000 people incarcerated. Nowadays, there are about 115,000 people behind bars, according to the Public Policy Institute of California.

As California moves toward referendums in 2020 on sentencing laws and bail, scholars worry that opponents will be successful in stoking fear among the public about runaway crime.

“I really worry that people will make decisions based on fear rather than empirical data,” Ms. Kubrin said.

A version of this article appears in print on Jan. 21, 2019, on Page A10 of the New York edition with the headline: Reform Pruned California’s Inmate Totals, but Critics Persist.



Cash bail reform to be decided by voters in 2020

By Jake Abbott / jabbott@appealdemocrat.com | Jan 20, 2019

Bail reform was set to take effect in California this October, after the governor signed into law a bill last year that would've put an end to the current cash bail system. That change was put on hold last Wednesday after a group opposed to the change gathered enough signatures to force a vote next year, leaving it up to citizens to decide what they want.

A local district attorney is in favor of ending cash bail as it is proposed under Senate Bill 10. One defense attorney says they support ending cash bail as well, though SB 10 isn't the answer. The biggest opposition comes from the bail bond industry, which would likely cease to exist in the state if cash bail under the proposal was eliminated.

The coalition – Californians Against the Reckless Bail Scheme – gathered the needed 365,880 valid signatures from registered voters within 90 days of Gov. Jerry Brown signing the bill into law. The group ended up gathering over 570,000 in only 70 days, leading to the Secretary of State certifying the results last week. The referendum will be on the November 2020 ballot.

Prosecutor's standpoint

Yuba County District Attorney Clint Curry said he was disappointed that the referendum was certified and believes it's a last-ditch effort by the bail bond industry, despite the ramifications of such a change in the criminal justice system.

"They are fighting for their survival, but the reality is, the cash bail system does not protect public safety," Curry said.

Cash bail, he said, really only protects against a person fleeing because an individual is more likely to return for a court date if they are at risk of losing more money.

Alternatively, he said, it gives a bail bondsman incentive to go find that person if they flee, but it doesn't protect public safety.

"They aren't out a dime if the person they bail out commits new crimes, and in fact, that means they are a repeat customer, so they make more money," he said.

Under SB 10, if the individual isn't safe to set free, they stay in custody, he said. Under that system, a probation department basically assesses whether or not a defendant is a flight risk or danger to society prior to trial using a specific method.

The law also had some discretion built into it that would ultimately leave it up to a judge to decide, adding another layer of protection, he said. Minor crimes would, for the most part, allow for the defendant to be released.

One example of how the current cash bail system can fail is playing out in Sutter County, he said.

An alleged pimp and human trafficker, Archie Thompson, was arrested and charged with 17 felony counts in 2016, including kidnapping for robbery, rape or sodomy; human trafficking for sex; pimping; kidnapping for ransom or extortion; procuring another person for the purpose of prostitution; and threats to commit a crime resulting in death or great bodily injury.

Facing life in prison for the charges, Thompson was given a \$500,000 bail. Thompson then paid a bondsman about \$5,000 to post his half-million dollar bond to get out of jail, and was reportedly required to wear an ankle monitor while released.

About a week before his trial was set to begin, a trial readiness hearing was set. Thompson never showed, leading to an arrest warrant being issued, but he still has yet to be apprehended.

One of the victim's family members, who wished to remain anonymous, said it's heart-wrenching for them and the victim, who haven't been awarded closure and are afraid for their safety due to the suspect being on the loose.

Defense attorney's standpoint

Local defense attorney Roberto Marquez said he, as well as most defense attorneys he knows, are in favor of reforming the cash bail system. However, they have issues with how SB 10 was written, he said.

The main issue Marquez has with cash bail is that it favors the rich and punishes the poor, even if both committed the same crime.

"The problem that I'd see too often was that courts would default back to a bail schedule, and my clients that deserved to be released on their own recognizance either had to pay a lot of money to get out, that was wasted on a bail bond company, or they'd have to stay in custody," Marquez said. "All of those issues can be handled by the release on OR (own recognizance) with conditions."

The problem with SB 10, he said, is that it creates an easier path for the courts to create a new class of people not bailable. It allows for a court to impose "preventative detention" on a defendant that they feel is a risk, but Marquez said that can be a slippery slope.

"Part of me says, 'let's defeat it and start over to make a new law that is fair to everybody,' but I'd say, defense attorneys as a whole, were not happy with how SB 10 ended up," Marquez said.

Bail bond standpoint

Jeff Clayton, executive director of the American Bail Coalition, said SB 10 would essentially make the state's bail system similar to the federal system, which is flawed. Since the federal Bail Reform Act in 1984, the number of people unable to meet the requirements of bail has nearly tripled, he said.

One of the biggest issues the group has with SB 10 is that the change would essentially broaden the term "preventative detention" to include most all crimes. He said that could lead to someone being held in jail for much longer than necessary if a prosecutor chooses to file certain motions.

"We think preventative detention is evil and never thought we'd see it in California," Clayton said.

Another issue with the proposed changes is the algorithm that places a defendant into one of three risk categories: low, medium or high. He said the system is inaccurate and in jurisdictions where it has been used, there have been instances where violent offenders have been declared "safe" while others with minor offenses were deemed "high risk."

Lastly, he said, eliminating cash bail under SB 10 would put more pressure on local programs in charge of supervising a defendant upon release.

Ultimately, he said, the best way forward is through a compromise of some sort that addresses everyone's concerns on a certain level.

"All we want are more alternatives for people. We are looking for something sustainable," Clayton said.

Representatives from local bail bond companies either declined to comment or did not return calls prior to publication.



Photo Courtesy of CNN

Bail Bonds Law To Appear On 2020 Ballot, Santa Clarita Expert Weighs In

Posted by: [Lorena Mejia](#) in [Community News](#), [Santa Clarita Latest News](#) January 21, 2019 - 12:35 pm

The campaign to overturn the law revamping the state's bail system has gathered enough signatures to be placed on the November 2020 ballot, prompting a Santa Clarita expert to weigh in on the matter.

In August, California Senate Bill 10 was signed into law by Governor Jerry Brown.

Under the bill, people who are arrested on suspicion of criminal offenses can be held in jail only if they pose a significant risk to public safety or risk missing their court date, according to officials.

Right after its passage, the coalition Californians Against the Reckless Bail Scheme gathered signatures to overturn it.

The coalition had 90 days from the date the governor signed the bill to collect 365,880 valid signatures from registered voters in California. The actual number gathered was 576,813 in only 70 days, according to the American Bail Coalition.

"We knew with the momentum against this law from people on all sides of the issue, getting on the ballot would not be the problem. Now we can move on toward defeating this reckless law," said Jeff Clayton, executive director of the American Bail Coalition.

Many have claimed that the cash bail system is unfair because it forces poor people to be stuck in jail, while those with financial means can "buy their way out," according to American Bail Coalition officials.

"A lot of people think bail bond companies are bad, but we bring balance," said Inessa Chavez, vice president of All American Bail Bonds in Santa Clarita.

SB 10 calls for the use of a controversial risk assessment tool to determine whether or not a person accused of a misdemeanor is to be detained or released. However, such tools have been shown to be inaccurate, according to officials.

In jurisdictions where this approach has been used, violent offenders have been declared "safe," while other individuals with minor blemishes on their records have been deemed "high risk" and left in jail, according to officials.

"This is the biggest system in the country, and if people don't realize how important it is, then many will be affected by it," said Chavez.

Los Angeles Times

California's historic overhaul of cash bail is now on hold, pending a 2020 referendum

By JAZMINE ULLOA JAN 16, 2019 | 7:25 PM | SACRAMENTO



A Los Angeles County sheriff's deputy prepares to unlock a security door at the L.A. County Men's Central Jail. (Jay L. Clendenin / Los Angeles Times)

A landmark law to abolish California's money bail system has been put on hold until voters decide its fate in November 2020 after elections officials on Wednesday certified a statewide referendum backed by a coalition of bail industry associations.

Elections officials verified more than 400,000 signatures to qualify the referendum for the ballot, setting the stage for a campaign battle between bail

companies fighting for their survival and state leaders who have pledged to protect indigent criminal defendants from unjust incarceration and fees.

Senate Bill 10, signed by former Gov. Jerry Brown last August, was slated to go into effect this fall. It would give judges greater discretion to decide who should remain in jail ahead of trial and eliminate the payment of money as a condition of release, a practice that critics say traps defendants in cycles of debt, even if they have not been convicted of a crime.

Bail groups fought the legislation since it was first proposed three years ago, saying it would result in the release of violent offenders to the streets and decimate a \$2-billion national industry, including 3,200 bail agents registered in the state. A day after Brown signed the law, a national coalition of bail agency groups launched its referendum drive, raising about \$3 million and collecting more than enough signatures to qualify the measure in just two months.

“We’re grateful to the hundreds of thousands of voters who signed petitions so quickly to qualify this referendum for the ballot,” Cesar E. McGuire, director of Bail Hotline Bail Bonds, said in a statement. “In passing this misguided bill, the Legislature ignored not only public safety and justice, but a fundamental of the criminal justice system — defendants must appear at trial for justice to be served.”

Bail companies will be able to continue doing business as usual until voters weigh whether to overturn the law. But court and government officials have pledged to defend the reforms and counter that the bail industry’s efforts will not stop momentum for changes to bail and other pretrial systems taking place in courts across the country.

Sen. Bob Hertzberg (D-Van Nuys), who coauthored the legislation, said he was confident it would remain “the law of the land.”

“We know that private equity firms poured hundreds of thousands of dollars into this campaign — not to protect public safety, or decrease the number of innocent people in jail, but to protect their bottom line,” he said in a statement.

In California, state Supreme Court cases have significantly altered the way judges assign bail, with rulings to increase equal access to justice and prevent counties from burdening the poor.

At least 11 counties are employing roughly 40 different pilot pretrial programs to reduce the number of people cycling in and out of jail, and as many as 49 California counties are using risk assessment tools, or tech analyses that help courts determine which defendants are fit for release and which pose a risk to public safety or of not coming back to court.

California Chief Justice Tani Cantil-Sakauye, who helped craft the state’s bail law, has assembled a working group to evaluate pretrial programs and make recommendations on next steps now that the law is on hold. Gov. Gavin Newsom earmarked \$75 million in his budget proposal last week for the Judicial Council, which is led by the chief justice and sets court rules, to give to counties over the next two years to implement and evaluate pretrial efforts in up to 10 courts.

State lawmakers have also turned an eye toward new legislation. On the first day of the 2019 legislative session, Hertzberg introduced a proposal that would require counties to report how they use the risk assessment tools in an effort to prevent improper and biased conclusions.

But as the bail industry’s campaign against the law gears up, some criminal justice and civil rights groups, including the American Civil Liberties Union of Northern California, could find themselves in a difficult position: They supported the end of the cash bail system but moved to oppose the new law amid fears that it would grant judges too much power to put more people behind bars.

They have since sought to distance themselves from the bail industry's referendum efforts, and are instead pushing for new court rules from the Judicial Council to prevent racial bias in the use of risk assessment tools.

Under the new law, only people charged with certain low-level, nonviolent misdemeanors — a list of charges that can be further narrowed by county — would be eligible for automatic release within 12 hours of being booked into jail.

All others arrested would have to undergo the risk analysis, a procedure that would sort defendants based on criminal history and other criteria into low-, medium- or high-risk categories. Courts would be required to release low-level defendants without assigning bail, pending a hearing. Pretrial services offices would decide whether to hold or release medium-risk offenders. Judges would have control over high-risk offenders and all prisoners in the system.

Human Rights Watch senior researcher John Raphling, whose organization supports a bail overhaul but opposed the final legislation signed by Brown, said his and other groups will work on proposing a different pretrial model in the Legislature that ends money bail and requires the release of more people based on the presumption of innocence.

“We will not be joining the bail industry's efforts, but we are not fighting for SB 10,” he said. “We have a different vision of how to reform the pretrial detention system.”



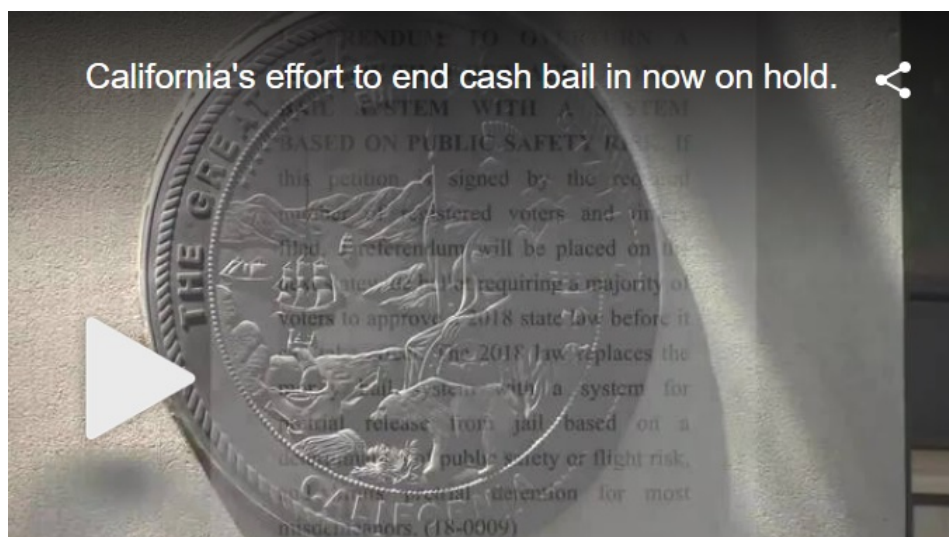
[California](#)

California's effort to end cash bail on hold

By: Ashley Zavala

Posted: Jan 17, 2019 05:27 PM PST

Updated: Jan 17, 2019 05:27 PM PST



SACRAMENTO (KRON) - California's effort to end cash bail is now on hold.

Months before the state was set to get rid of cash bail and put bail bondsmen out of business, the secretary of state announced a referendum against the new law now qualifies for the 2020 ballot.

A coalition of bail agents gathered more than 576,000 signatures for the referendum.

President of the Golden State Bail Agents Association, Topo Padilla, said getting rid of the cash bail system would require taxpayers to foot the bill for a \$3.2 billion program.

Suspects would be jailed based on a risk assessment under the proposed system.

"The taxpayers, nobody was told about how much it's going to cost to run this program and whether this program is viably operational," Padilla said. "What people don't understand about SB10, is that it's going to play with public safety."

Those in support of ending cash bail, believe the system will help reduce racial and economic disparities in the criminal justice system.

Assemblyman Rob Bonta co-authored the law.

"Sometimes doing the right thing requires investments," he said. "Less people will be incarcerated, certainly people who don't need to be incarcerated won't be."

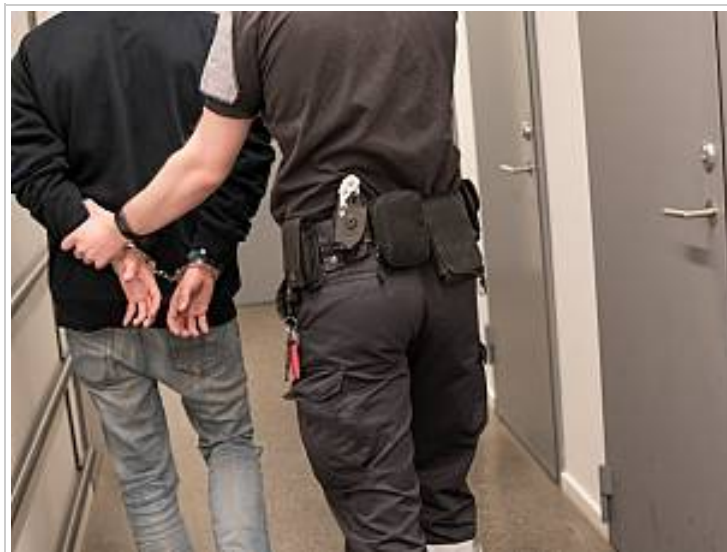
It's up to voters to determine what happens next.

Bonta said, "We should not have a system where the jailhouse door opens and closes based on how much money you have, we should not have a system where your judged and liberty is given to you based on the size of your wallet instead of based on your risk."

California Voters to Decide the Future of Their State's Bail System

Industry representatives succeed in forcing a referendum on reforms passed by lawmakers.

[Scott Shackford](#) | Jan. 17, 2019 1:10 pm



Thomasafure / Dreamstime.com

This year, California was supposed to be making a [historic shift away](#) from the use of [cash bail](#) to determine whether people who get arrested are freed or detained in jail prior to their trials.

Instead, the changes probably won't happen until 2021, and only if the voters agree. Secretary of State Alex Padilla announced this week that the reforms, passed via legislation last fall, have been [pushed to a referendum](#) to be held the fall of 2020.

SB10, signed into law in August, was intended to eliminate the use of cash bail in the state entirely. Cash bail has come under fire as a pretrial system because courts often apply it thoughtlessly, resulting in poor people being stuck in jail awaiting their day in court not because they're dangers to the community or flight risks, but because they cannot afford to pay. Such people are statistically more likely to plead guilty and receive harsher punishments than they would have had they been free to fight.

Instead of cash bail, California courts would be required to implement an extensive (and possibly expensive) pretrial assessment and monitoring system. Arrested defendants would be evaluated to determine the risks of release, and conditions would be established to keep track of them. If a defendant is deemed to be too dangerous to release, he or she would be detained in jail prior to the trial. Money would no longer be a condition.

None of this sat well with bail bondsmen and the insurance industry that underwrites them. New Jersey has shifted to a system where cash bail is almost completely absent, and that has decimated the bail bond industry. Their representatives fought bail reform in California extensively, and after SB10 was signed into law, they immediately went to work gathering signatures to try to force it to a public vote.

In November those reform opponents declared they had [gathered enough signatures](#), more than 400,000 of them, to push SB10 onto a referendum. This week Padilla validated that they qualified. This means SB10 cannot legally be implemented until after the public vote.

Given current criminal justice reform trends, I'd put the chances of the bail bond industry succeeding here as low. California voters have slowly been scaling back the state's harsh sentencing laws, not to mention legalizing both medical and recreational marijuana use. Furthermore, New Jersey's bail reform experiment has been [fairly successful](#) so far. They've got fewer people being detained in jail yet the state has not seen an increase in crime.

But the bill passed in California has some significant differences from what was passed in New Jersey. In California, the judicial branch and the court system has significant amount of control over how these new systems will be implemented, and the law has been written in such a way that it will give judges wide latitude to order defendants to be detained. In New Jersey, the system operates on the presumption that defendants will be released unless prosecutors can make a clear case to a judge that they are too dangerous or a flight risk.

Because of these changes, several criminal justice reform groups that initially helped craft California's bill [turned against it](#), worried that it will actually lead to increases in pretrial detentions. Representatives from the bail bond industry argue that citizens have a right to cash bail, though federal courts [don't actually agree](#) with that as long as there is some sort of pretrial evaluation system. But if the end result is for more people to be detained and not be able to get out at all, the case to allow for cash bail as an option grows stronger.

Not that we should expect such nuances from the extensive advertising campaign that will be coming down the line in 2020. Instead we'll see lots of emphasis from both sides on when pretrial decisions lead to bad outcomes—either when a harmless person is subjected to [overly harsh](#) pretrial detention because he or she had no money, or alternatively, when a person who is released without having to pay cash bail turns out to be dangerous.

It's worth noting that the temporary suspension of SB10 doesn't stop California communities and court systems from reforming bail on their own or in their own way right now. Currently, [Compton](#) is experimenting with a system where judges agree to reduce cash bail demands in exchange for concessions from the defendant, such as an agreement to go a drug or alcohol treatment center while awaiting trial.

Photo Credit: Thomasafure / Dreamstime.com

[Scott Shackford](#) is an associate editor at Reason.com



California voters must approve law to end bail before trial



(AP Photo/Lenny Ignelzi)

POSTED: JAN 16 2019 07:23PM PST

SACRAMENTO, Calif. (AP) -- The nation's first law eliminating bail for suspects awaiting trial is on hold until California voters decide whether to overturn it, officials said Wednesday.

A referendum that qualified for the 2020 state ballot would overturn the law signed last year by then-Gov. Jerry Brown, Secretary of State Alex Padilla said in a statement. The law would replace bail with a risk-assessment system -- although it's still unclear how the system will work.

The law scheduled to go into effect in October 2019. Now it must be approved by a majority of voters before it can take effect.

The rules would give the state's judicial council broad authority to reshape pretrial detention policies. Based on the council's framework, each county's superior court will set its own procedures for deciding who to release before trial, potentially creating a patchwork system based on where a suspect lives.

Most suspects accused of nonviolent felonies will be released within 12 hours of booking, while those charged with serious, violent felonies will stay in jail before trial.

The law would give judges wide latitude to decide what to do with other suspects based on their likelihood of returning to court and the danger they pose to the public.

It's the latest development in the nationwide debate over bail, which many people say unfairly punishes people for being poor.

Advocates of the California law say incarceration should depend on a suspect's risk to public safety, not the ability to pay.

Opponents, including some social justice groups, argue the new law gives judges too much power to decide who should be released and will allow dangerous people to go free.

The law would let counties set up their own pretrial assessment agencies or run their risk assessment programs through existing probation departments.

The referendum needed more than 402,000 signatures to qualify for the 2020 ballot, and it exceeded that threshold this week, Padilla said.

Santa Cruz Sentinel

www.santacruzsentinel.com

New bail law would have increased jail population, sheriff says

Voters to determine whether money should be part of inmate's release



Sheriff Jim Hart said a new law eliminating cash bail would increase jail crowding. (Dan Coyro — Santa Cruz Sentinel file)

By [MICHAEL TODD](#) | mtodd@santacruzsentinel.com | Santa Cruz Sentinel

PUBLISHED: January 18, 2019 at 5:03 pm | UPDATED: January 18, 2019 at 5:05 pm

SANTA CRUZ — Sheriff Jim Hart said the state law previously set to eradicate bail in October would have burdened Santa Cruz County Jail — already crowded from prison realignment, among other factors — with an additional 1,000 inmates annually.

But that law, Senate Bill 10, must be approved by voters by referendum in 2020, Secretary of State Alex Padilla announced Wednesday. Opponents of the law — led by members of the bail industry — exceeded the minimum signatures required to qualify voter consideration. More than 400,000 signatures were gathered, according to the [Secretary of State](#).

Senate Bill 10 is designed to change the process of releasing inmates before trial; a risk-assessment process by a probation department or private vendor would determine whether a person is safe to release, Hart said.

Hart said money should not determine a person's right to freedom, especially a person who would not be safe to release. But the added review would reverse the release of about 1,000 inmates annually in Santa Cruz County in cases that typically result in an almost immediate release on bond, he said.

Bail is money or property owed to courts by defendants who fail to appear for court hearings.

Many cases warrant bond on a promise to appear in court and those arrested are immediately released.

“SB10 was going to make us hold those people until a risk assessment was done and a judge made a decision on that assessment,” Hart said Friday. “I’m conflicted in that the jail’s already overcrowded and I have concerns about the impact.”

Santa Cruz Main Jail, at 259 Water St., is the corrections system’s main intake for newly arrested inmates, Sgt. Dee Baldwin said. That jail often operates with more inmates than its 319 capacity. Friday, there were 381 inmates at the main jail, he said.

“It’s a double-edged sword,” Hart said of Senate Bill 10, which former Gov. Jerry Brown signed into law last year.

“I think any time you can make a decision regarding someone’s release based on risk, rather than how much money they have, that’s a really good thing that SB10 does,” Hart said. “Just because somebody posts bail, that doesn’t make them safer to the community.”

But bail bonds workers in Santa Cruz have told the Sentinel that the cash element helps to ensure the accused will appear for their court hearings.

Members of the American Bail Coalition, a trade organization, in a release this week said Senate Bill 10 would be a costly initiative and challenges whether the assessment system would function.

Hart said Santa Cruz County Probation Department already provides risk assessments at the main jail.

“They use a validated risk-assessment tool,” Hart said. “I think a person would get a fair look. We’ve been using the risk-assessment system in our jail for many, many years.”



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Michelle Johnson/WPR

Bail Bond Industry Fights Back Against Moves To Limit Or End Cash Bail

Wisconsin Among Handful Of States That Ban Bail Bonding

By Sheila Cohen | Wisconsin Center for Investigative Journalism

Published:

Monday, January 21, 2019, 6:00am

In many states, pretrial inmates may end up in heavy debt to bail bondsmen, even if they are ultimately acquitted. Wisconsin is one of a handful of states that have laws banning bail bonding, having abolished it in 1979.

Bail bonding is the practice of hiring a third-party bail bondsman who pledges to pay the full cash bond amount if the defendant fails to appear for court. The defendant is released after paying a non-refundable fee, usually 10 percent of the bond amount, to the bail bondsman. Even if the defendant is innocent and the charges get dropped, he or she does not get that money back.

In August, California became the most recent state to vote to eliminate cash bail. That move would have put the state's bail bond industry out of business starting in October 2019.

But the industry submitted enough signatures to require a statewide referendum before the law goes into effect. Those signatures were verified in January, putting the new law on hold until the November 2020 referendum.

The American Bar Association, the National District Attorneys Association and other groups agree commercial bail bonding adds to the inequities of pretrial cash bail, with

defendants who cannot afford the bail forced to pay even more money to cover the cost of the commercial bail bond.

When asked his opinion on the bail bond system, New York City Comptroller Scott Stringer responded, "Commercial bail siphons money from thousands of low-income New Yorkers to the pockets of opportunistic bondsmen ... They're costing taxpayers millions, and they're not making our city any safer."

Nevertheless, the bail-for-profit industry is a frequently used method in this country for securing freedom while awaiting trial. Wisconsin and a handful of other states, including Illinois, Kentucky and Oregon, currently prohibit commercial bail bonding. Some activists would like to abolish cash bail altogether, but there is a strong profit motive from the bail bond industry to keep the practice alive.

To counter the claims of bail reform advocates, the AIA Bail Bond Surety Co. has circulated a report titled, "One Thing Missing from the Bail Reform Debate: The Truth."

In the report, AIA spokesman Brian Nairin wrote, "Financially secured release is the MOST effective way to ensure a defendant's appearance in court ... Release through the public sector pretrial program is one of the LEAST effective methods."

He wrote that, "The real victim of any crime is NOT the person accused of committing it. It is the person who the crime was committed against."

Leslie Dollen, a former public defender who teaches at the University of Wisconsin–Superior's legal studies program, said that assertion is "philosophically troubling" because "it rejects the constitutional presumption of innocence until proven otherwise."

She added, "I find it abhorrent that we are incarcerating some people just because they happen to be poor."

To beef up its lobbying efforts, the American Bail Coalition has aligned itself with the American Legislative Exchange Council (ALEC), an organization composed of lawmakers and corporations that draft state legislation to serve their members' interests.

ALEC has pressed for legislation throughout the country to protect and expand the bond industry and the surety companies that insure them. Since it began lobbying, the American Bail Coalition has supported about a dozen of ALEC's "model" bills, including a provision that enables some courts to make bond a requirement for early release from prison, Mother Jones magazine found.

In Wisconsin, there have been several attempts to bring bail bonding back. A pitch crept its way into the 2011-12 budget but was so vehemently opposed by then-Dane County Chief Judge William Foust and nine other Wisconsin chief judges that then-Gov. Scott Walker eliminated it by line-item veto. A later effort was made in the 2013-15 budget, but was again met with a veto by Walker.

Editor's Note: This story is part of "Beyond Bail," a Wisconsin Center for Investigative Journalism series exploring the use of cash bail in Wisconsin and around the country.

Emily Hamer contributed to this story. Sheila Cohen, who reported this story, is a donor to the nonprofit Wisconsin Center for Investigative Journalism

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Correction: A Jan. 21 story from the Wisconsin Center for Investigative Journalism on bail bonding incorrectly reported that Washington, D.C., does not allow commercial bail bonding. Although rarely used, bail bonding is allowed there.

The Bakersfield Californian

News

Voters will decide in 2020 whether to eliminate cash bail

BY JASON KOTOWSKI jkotowski@bakersfield.com Jan 23, 2019



Bad Dog Bail Bonds, one of many bail bonds companies in Bakersfield.
Felix Adamo / The Californian

Enough signatures have been gathered for a referendum on a new law that would abolish cash bail, providing a reprieve to the thousands of bail bondsmen in the state whose industry would perish if the law goes forward.

Passed in August, Senate Bill 10 eliminates bail for all individuals charged with a crime, replacing the system with risk assessments that determine who should be let out of jail to await trial, and what restrictions they should face. It had been set to take effect in October. But upon the bill's passage in August, a group called Californians Against the Reckless Bail Scheme began gathering signatures. This month it announced it collected 576,813 signatures — far surpassing the required 365,880.

"We knew with the momentum against this law from people on all sides of the issue, getting on the ballot would not be the problem," Jeff Clayton, executive director of the American Bail Coalition, said in a news release. "Now we can move on toward defeating this reckless law."

Supporters say abolishing cash bail would make the criminal justice system more equal for those who can't afford to bail themselves out.

Assemblyman Rob Bonta, D-Alameda, one of the bill's authors, posted a statement in response to the signature gathering effort last week calling cash bail "an unsafe, unjust, unfair, predatory for-profit system that hurts people."

"The money bail industry is desperately trying to hang on and buy themselves more time," Bonta wrote. "But even they see the writing on the wall. Money bail is wrong. It's unjust. It doesn't promote public safety and it ruins lives."

Detractors of the law, however, say it could result in more people spending time behind bars than under the cash bail system.

T.J. Esposito, marketing director for Patriot Bail Bonds in Bakersfield, said people who otherwise could have bailed out could end up sitting in a jail cell until their case is heard. He said the new law is just the latest example of overreaching on the part of the legislature and "soft on crime" laws.

And a number of people who are released under the new system, Esposito said, will likely skip their court hearing because there's no reason financially for them to show up.

Under the cash bail system, bail bondsmen usually post bail for those in custody. The accused usually need to pay the bail bondsman a nonrefundable fee of 7 to 10 percent of the bail price in order for the bondsman to post bail.

Failure to turn up in court results in the bondsman rescinding the bail amount.

"You have someone vouching for you," Esposito said of cash bail. "You have skin in the game, money to lose."

The county probation department would likely have to hire more employees to handle the new system.

The department already does assessments for the types of restrictions that should be required for those on probation, but the new system would most likely call on local offices to amend some of their already existing assessments to determine who should be eligible for bail.

You can reach Jason Kotowski at 395-7491 or on Twitter @TBCBreakingNews

THE APPEAL



Photo illustration by Anagraph. Photo by Guy Cali/Getty Images.

Ethan Corey, Puck Lo

Jan 09, 2019

THE ‘FAILURE TO APPEAR’ FALLACY

Prosecutors denounce bail reform efforts when people miss court dates, but ‘failure to appear’ rates obscure the fact that many who miss court aren’t on the run.

When the judge set his bail at \$3,000, Jonathan Broad*, 57, thought “All I want is to die free—not in jail.”

Broad was arrested in March 2016 and convicted of “criminal possession of a controlled substance.” When he appeared before the judge shortly after his arrest, he was unemployed and living in a homeless shelter in New York City and suffered from

congestive heart failure, diabetes, and asthma. He could not pay the bail. A stint in jail, Broad knew, could be a death sentence.

Bail is not supposed to impose capital punishment, nor is it even supposed to be punitive. The institution of bail traces its history to medieval England, where it was meant to ensure that individuals charged with crimes didn't evade justice. Since then, however, cash bail has transformed into a de facto form of pretrial incarceration, often for people who have simply been accused of low-level offenses, such drug or property crimes. According to the Bureau of Justice Statistics, nearly half a million people sit in jail waiting for trial nationwide, the vast majority of whom would be free if not for their inability to afford bail.

For about a month, Broad was one of them. At his arraignment, the judge noted that Broad had a long history of similar drug charges, no cell phone number and an open warrant from a recently missed court date. The judge appeared to be unmoved by the fact that Broad had missed court because he had been hospitalized that entire month because of his heart condition.

As states (like California and New Jersey) and jurisdictions across the country enact bail reform policies to eliminate or reduce the role of money bail, critics of bail reform argue that without cash bail, the thousands of defendants who are released on non-monetary conditions will skip their court dates. Based on apparent increases in the number of people missing court hearings, many bail reform pilot programs are already being denounced by pundits and prosecutors as failures. For instance, in Harris County, Texas, the district clerk announced that after bail reform, 43 percent of those individuals who were released without cash bail failed to appear for court between June and December 2017. Similarly, in the fall of 2018, prosecutors in Atlanta claimed that just six months into bail reform the rate of people failing to return to court after being released without bail doubled.

This single-minded focus on so-called failure-to-appear (FTA) rates obscures the fact that most people who miss court aren't on the run. Like Broad, they are often the most vulnerable people in the criminal justice system: poor, homeless, or mentally ill. Relying on cash bail and pretrial detention to ensure appearance at trial compounds the harms marginalized defendants already face. Decades of research and the experiences of community bail funds show that it's possible to help people accused of crimes make it to court without jeopardizing their freedom or undermining the presumption of innocence guaranteed by the Constitution.

“If you miss a doctor’s appointment, you call and reschedule...why is this so different?”

Cases like Broad’s highlight a fundamental ambiguity in the term “failure to appear”: people who miss court dates for reasons beyond their control are counted the same as defendants who intentionally avoid court. While bail theoretically discourages people from joining the latter group, there’s little evidence to suggest that absconding is a problem, argues Traci Schlesinger, a sociologist at DePaul University and a board member for the Pretrial Justice Institute.

“What we’re finding is that when people aren’t making it to court for their first appointment, most likely they’ll come to their second appointment—and nearly everyone makes it by the third,” Schlesinger said. “If people aren’t missing past the third appearance, they haven’t failed to appear.”

Most FTAs are the result of forgetfulness or circumstances beyond a defendant’s control, according to Atara Rich-Shea, director of operations at the Massachusetts Bail Fund. They might need child care, or they are just confused by the court system. A court appearance might take place months after a ticket—long forgotten—was issued.

Nor are missed appointments unique to the criminal justice system. Multiple studies report no-show rates of 15 to 30 percent for medical appointments, which is about the same as the criminal court FTA rate in most U.S. jurisdictions. Some parts of the civil court system, like small claims court and housing court, have absentee rates as high as 95 percent.

“If you miss a doctor’s appointment, you call and reschedule,” Rich-Shea said. “If you miss an appointment with your cable company, you call and reschedule. Why is this so different?”

FTA is also calculated differently in different jurisdictions at different times, and by various agencies. Some agencies calculate the total number of court appointments missed — so that one person who missed 10 court dates would generate 10 FTAs. Other jurisdictions count the number of individuals who failed to appear at any point during the lifetime of a case—so whether a person misses one or 10 court dates, for example, that person would be recorded as one FTA.

Court dates can drag out over months and even years, requiring a person who faces charges to return multiple times. Many courts are only open during weekday office hours, when many people find it most difficult to take time off from work.

In fact, the percentage of FTAs resulting from defendants absconding is exceedingly low, notes Syracuse University College of Law professor Lauryn Gouldin, author of a [2018 law review article](#) on flight risk.

The largest study on court appearances to date, conducted by the [Bureau of Justice Statistics](#) between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates. Of the minority that missed at least one hearing, 94 percent appeared in court within a year after their missed court date.

Nevertheless, in many jurisdictions, FTA rates make no distinction between a person who arrives five minutes late for a hearing and one who flees the country.

“That seems like a real flaw to me,” Gouldin told The Appeal. “Every non-appearance is treated the same, making more innocuous, preventable non-appearances seem more risky.”

Meanwhile, an increasing number of studies show that FTA rates [can be drastically reduced](#) by simply redesigning confusing summons notices and sending text message reminders. A January 2018 University of Chicago study found that FTA rates dropped by almost a third (32 percent) one month after New York City implemented these changes.

“Oftentimes we have clients who make several court dates in a row—sometimes five or six—and then miss a later court date,” said Nicole Follmann, co-manager of Bail Operations at the Brooklyn Community Bail Fund. “People cannot continue to take off work or school month after month to continue to come back to court dates where nothing happens.”

The Brooklyn Community Bail Fund eventually paid Broad’s bail, and in the weeks after his release from Rikers Island, Broad made his initial court dates. But he was not in good health. For one appointment, he came to court directly from the hospital. His recent stint in jail had been hard on him. While incarcerated at Rikers, Broad was denied his medication, and he experienced chest pains and limb swelling as a result.

In July, Broad missed his third court date. When the bail fund called to follow up with him, they were told by his attorney that he had been hospitalized. The judge stayed a bench warrant once—but when Broad, still hospitalized, missed his court date in August, the judge issued the warrant.

“People were being released without being told when their court dates were...Some clients would wait and sleep outside the courthouse.”

In 2017, a federal judge in Harris County, Texas, ruled that its cash bail system was unconstitutional. The judge ordered the county to release people who had been arrested on misdemeanor charges but could not afford to pay their bail.

But since the judge’s ruling, Harris County prosecutors who oppose the reform have used FTA rates as “political football” to frustrate bail reform efforts, said Jay Jenkins, an attorney for the Texas Criminal Justice Coalition.

After anti-reform judges claimed that FTA rates increased after the federal court ruling, the American Bail Coalition released a statement decrying the release program as a failed social experiment. “34.6 percent of those the judge is releasing will thumb their nose at the process and not show up for court, costing Harris County millions of dollars to remedy,” said Jeffrey Clayton, executive director of the American Bail Coalition. “The Facts are the facts.”

Harris County criminal court Judge Darrell Jordan countered that 14 other judges who opposed bail reform had “taken steps to sabotage the federal injunction and to manipulate the bond-forfeiture statistics to make it look like people released on unsecured bond pursuant to the federal order are failing to appear in droves.”

Jordan claimed that the other judges intentionally set court hearings less than 24 hours after defendants were released, “a policy designed to make it more likely that people released pursuant to the federal court order will miss court and to inflate the bond-forfeiture numbers for people released pursuant to the federal court order.”

“People were being released without being told when their court dates were,” recalled Jenkins, of the Texas Criminal Justice Coalition. “Public defenders would tell their clients, ‘I think you might have a court date tomorrow, even though they say it isn’t until next week.’ Some clients would wait and sleep outside the courthouse, on a bench.”

Anti-reform judges also exploited a loophole in the 2017 federal court order that required the release of misdemeanor defendants, regardless of their ability to pay bail, but didn’t prevent judges from continuing to set high bails. According to Jordan, this allowed the judges to “funnel” people covered by the order away from the county’s pre-existing pretrial release program, which provides defendants released on personal bond with basic supervision and reminders to ensure they make all of their court appearances.

“Despite knowing that higher risk arrestees will be released on unsecured bond pursuant to the injunction,” Jordan said, “my colleagues have refused to require basic pretrial supervision and court reminders to the group of arrestees released on unsecured bond.”

A January 2018 investigation by the Houston Chronicle found that this practice led to a small group of defendants accounting for a disproportionate number of missed court appearances. Just 29 people, many of whom were mentally ill or homeless, accounted for 235 bond forfeitures. Instead of working to address the reasons these defendants failed to appear in court, anti-reform judges continued to release them with nothing more than a sheet of paper with their next court date written on it.

In November 2018, all 14 anti-reform judges were swept out of office when Harris County voters elected a pro-reform slate of candidates to the bench. Just days after the new judges took their oaths of office this month, they withdrew the appeal of the federal court ruling, opening the door for the county to reach a settlement that permanently reforms its use of cash bail.

The collateral consequences of Failure to Appear

For many people, a single FTA can keep them trapped in the criminal justice system. Failure to appear is a crime in 46 states, meaning that even when people are acquitted of the offense for which they were appearing for court in the first place, they can face further prosecution for their missed court dates. In some states, penalties for FTAs can be as high as 10 years in prison.

Additionally, most jurisdictions consider past FTAs when setting bail. In many cases, courts will use bail schedules or risk assessment tools that factor missed court dates and resulting open warrants into bail determinations. In New York City, for instance, bail recommendations for people like Broad are made by the city’s Criminal Justice Agency, which rates defendants using a risk assessment algorithm intended to measure likelihood of appearing for court. The algorithm relies on variables such as whether a person has full-time employment or a New York City address. While the agency’s recommendations aren’t binding, people with a high risk score are three times more likely to be denied pretrial release than those with low or moderate risk scores.

But perhaps most important factor that judges look for, according to the Brooklyn Community Bail Fund, is the number of past FTAs. Defendants with even one FTA on their record may be denied release without bail.

Even in states working to eliminate the role of cash bail, such as New Jersey, a past FTA can mean the difference between confinement and freedom. In 2017, the state

virtually abolished its cash bail system but defendants are nonetheless rated by the Laura and John Arnold Foundation's Public Safety Assessment. The tool uses nine factors to evaluate a person's statistical "risk" for failing to appear in court, being involved in "new criminal activity" (the likelihood that a person will be rearrested for any crime before trial) and being involved in "new violent criminal activity" (the likelihood that a person will be rearrested for a violent crime before trial). In each of those categories, prior FTAs add significant "risk" to a person's score.

Defendants with high risk scores can be denied pretrial release altogether or subjected to onerous release conditions including house arrest and electronic monitoring.

Sakira Cook, senior counsel at the Leadership Conference on Civil and Human Rights, notes that the overpolicing of communities of color means that people from those communities are likelier to have prior convictions or past FTAs, which lead to high scores on pretrial risk algorithms.

"Criminal justice data reflects the biases in our criminal justice system," Cook said. "Criminal justice data does not tell us who is committing crimes and what crimes are taking place; it tells us who is being policed. It's extremely concerning to say we want to end money bail because it disproportionately impacts people of color but then put in a new system that further impacts people of color and call it reform."

Indeed, a 2016 paper that analyzed pretrial risk assessment tools found that pre-existing racial disparities in the criminal justice system make it mathematically impossible to construct an accurate risk algorithm without creating new racial disparities. As a result, argues legal scholar Bernard Harcourt, risk itself becomes a proxy for race.

The metric that we should care about instead of FTA, argued Rich-Shea from the Massachusetts Bail Fund, is how frequently cases where defendants are held on bail are dismissed outright before they go to trial.

A Bureau of Justice Statistics survey published in 2013 of 40 large urban jurisdictions found that about 25 percent of all felony cases get dismissed. Research shows that conviction rates drop even further when people are able to fight their cases from outside jail. A 2016 study of defendants in Philadelphia and Miami-Dade County found that pretrial release reduced the likelihood of conviction for felony and misdemeanor defendants from 57 percent to 49 percent.

Rich-Shea has seen this firsthand with the clients her organization bails out in Massachusetts. "Fifty percent of all the cases that we serve are dismissed completely," she said, referring to the people for whom the Massachusetts Bail Fund paid bail.

The Brooklyn Community Bail Fund lost touch with Broad six months after paying his bail. It isn't uncommon to lose touch with a client, said Follmann of the bail fund. Living on the streets and in shelters makes it very difficult to keep a cell phone, she added. Often, people's phone numbers change when their service gets cut off.

"Punishing people for not making a court appearance, when there are so many barriers— transportation, communication, time off, childcare—to getting there, is ridiculous," said Follmann. "And punishing someone hospitalized for heart failure exemplifies this injustice."

* "Jonathan Broad" is a pseudonym. Because the Brooklyn Community Bail Fund is no longer in contact with Broad, the fund could not get his permission to use his real name.

Los Angeles Times

Bail companies in California have conspired to keep premiums high, lawsuit alleges

By JAZMINE ULLOA JAN 29, 2019 | 1:40 PM | SACRAMENTO



Detainees wait in 2016 to appear in a Sacramento court. Bail customers filed a class-action lawsuit against more than 20 surety companies and agents Tuesday, alleging they have conspired to keep premiums high. (Rich Pedroncelli / Associated Press)

With a historic law overhauling California's cash bail system on hold, bail customers on Tuesday filed a class-action lawsuit against more than 20 surety companies and agents in the state, alleging they have conspired to keep premiums high for criminal defendants.

The antitrust case, which the plaintiffs' attorneys said could be the first of its kind in the country, alleges that the companies worked together since at least 2004 to fix prices and prevent competition in the market, discouraging bail

agents from offering discounts or rebates in private meetings and messaging at industry conferences, and retaliating against those who refused.

The lawsuit was filed by four public interest groups on behalf of people who, according to the complaint, paid maximum prices for bail bonds as they sought their or someone else's release from jail and later struggled to pay the debt. They are requesting that a judge stop the sureties from engaging in alleged "cartel pricing" practices and collecting assets on debt, according to the complaint filed in Alameda County.

They want the court to order the bail surety businesses, companies that underwrite bonds, to pay damages to alleged victims and correct all alleged misleading statements in print and online materials.

"What makes this case particularly important is that the product being fixed is not a consumer good but someone's freedom," said attorney Dean Harvey, who is lead counsel on the case. "It is about whether a presumptively innocent person is able to go to their job or not, take care of their children or not."

Greg "Topo" Padilla, president of the Golden State Bail Agents Assn., one of the associations named in the lawsuit, said he had not seen the complaint and could not speak to its allegations.

But, "we have fought for years to lower bail schedules, which would lower premiums," he said. "We have been stopped at every one of these attempts by the Legislature."

Jeffrey Clayton, a spokesman for the effort and director of the American Bail Coalition, said he and his organization were reviewing the lawsuit and not prepared to comment.

Calls to other bail agents and associations named in the lawsuit were not immediately returned on Tuesday.

The lawsuit is the latest volley against a bail industry locked in a fierce battle with California lawmakers and court officials determined to abolish a system that they say has run unchecked for years and preys on the most vulnerable.

Gov. Jerry Brown last year signed a law that would prevent courts from using fixed money bail fees in releasing people from jail while their cases are pending, granting greater power to judges and county agencies to decide which defendants pose a risk to public safety. But the effort is now on hold until voters decide its fate in November 2020 — elections officials this month certified a statewide referendum backed by a coalition of bail industry associations.

Bail companies, which can continue doing business until the election, are gearing up for a campaign fight against a law that could spell extinction for their industry in California. The state holds roughly a quarter of the \$2-billion market nationwide and has 3,200 registered bail agents.

Bail companies and sureties have faced civil cases in the past over allegations of malpractice and fraud, among other things. But attorneys in the suit filed Tuesday say it appears to be the first in the country that seeks to build wider conspiracy charges based on antitrust and consumer laws.

Under the current pretrial system, judges must factor in a defendant's ability to pay as they set bail according to lists of criminal offenses and fixed fees. If a defendant is unable to post the amount in advance, a nonrefundable fee — typically a premium of 10% or less of that amount — can be paid to a bail company to front the money.

Like other insurance companies in the state, bail sureties submit their maximum premium rates to the California Department of Insurance for approval. In 1998, California voters approved a law that allowed insurers to reduce premium rates for consumers, and a state court ruling in February 2004 confirmed “rebating” was legal, allowing bail agents to charge less than those premium rates, the class-action lawsuit states.

But lawyers for the bail customers allege sureties have kept that premium rate at the maximum of 10% for most criminal defendants by concealing their industry's option to charge lower rates and refraining from offering competitive rebates.

Since 2004, the complaint alleges, surety representatives have agreed not to compete over premium prices and have directed bail agents not to do so, using bail industry associations "as a conduit for enforcing their price-fixing cartel down to the bail agent level."

Through blog posts and private meetings, industry-sponsored training courses and conferences, the industry keeps agents in check, the lawsuit claims. The complaint cites a course offered by the Bail Resource Center and Career Academy that teaches "the right answer on the test: no rebates."

A defendant named Jerry Watson, vice president of AIA Surety, the country's largest bail surety administrator, "has publicly denounced price-cutting as a cancer" on the group's website, according to the complaint.

"Furthermore, the cartel intimidates competitors to toe the line," the lawsuit says. "When competitors attempt to compete by offering lower rates or rebating, cartel members brand them as 'break[ing] the law,' despite knowing that to be false," it says.

At the center of the case is Aladdin Bail Bonds, the largest agency in California and its surety. The lawsuit alleges that Aladdin misleads its customers by asserting on its website that its fees "are standard and nonnegotiable" as required by law.

The plaintiffs' attorneys say they began working on the case before California state lawmakers passed Senate Bill 10 to overhaul the cash bail system. Its fate has no bearing on their complaint moving forward, they argue, because even if the state's money bail system is eliminated, the law does not assist residents who paid inflated premiums and does not prevent surety companies from continuing to collect on debt.

The complaint could include thousands of class members — from October 2011 to October 2015 alone, it states, about 180,000 people were released on bail ahead of trial, nearly all of whom relied on commercial surety bonds.

It's not just criminal defendants who were affected, Harvey said, but also their relatives who often posted money for the premiums and in some cases lost homes, cars and other assets in an attempt to pay sureties back.

“What I find particularly appalling about the misconduct here is that it targeted the most vulnerable people in society at their moment of greatest duress,” Harvey said.

Tampa Bay Times

NEWS/PUBLIC SAFETY

Hillsborough prosecutor joins Texas fight against cash bail. But what about Florida?

He is among more than 80 lawyers and public officials to sign a support brief in a Texas case challenging the constitutionality of cash bail. But bail reform has yet to come to Florida.



Hillsborough State Attorney Andrew Warren lent his support to a Texas case challenging the constitutionality of cash bail. Criminal justice reformers are taking aim at money bail systems across the nation. [MONICA HERNDON | Times]

By **Dan Sullivan**

Published February 1

TAMPA — Count Andrew Warren among the proponents of bail reform.

The chief prosecutor for Hillsborough County recently added his name to a legal brief supporting the plaintiffs in a Texas case challenging the constitutionality of a money bail system.

The brief's authors call money bail "wealth-based discrimination." Warren was one of more than 80 lawyers and public safety officials nationwide who have joined the brief.

"We shouldn't be spending taxpayer money to lock up people who haven't been convicted of a crime when they're not a flight risk or a threat to public safety," the Hillsborough County State Attorney said.

But while he supports reform, Warren says he doesn't see major problems with the bail bond system in Hillsborough County. He also emphasized his support is consistent with other policies he has pursued as he seeks what he believes is a fairer approach to prosecuting crime. He pointed to a decrease in prosecutions for minor charges like driving with a suspended license, offenses that some say contribute to the criminalization of poverty.

"Making sure we are not detaining people based on an inability to pay is consistent with fairness and justice," he said.

...

Bail reform is a hot topic nationwide and among criminal justice reformers. The general argument is that cash bail keeps impoverished defendants who can't afford any bail amount trapped in the jail — even though they haven't been found guilty — until their cases are resolved.

Reform advocates say that this adds to the cycle of poverty because long jail stays can cost poor defendants their jobs and even render them homeless. They also argue that being trapped in jail creates a perverse incentive: some might plead guilty to crimes they did not commit just so they can get out of jail.

The American Bar Association has advocated for limits to the use of cash bail.

The reform push has led some jurisdictions to scale back bond schedules for minor offenses, and for others to eliminate cash bail altogether.

The Texas lawsuit challenges the use of pre-set bail amounts in Dallas County. Its plaintiffs include six people who were arrested there in 2018, and who lacked the financial means to pay the bail required for their release. They are represented by lawyers from two civil rights groups. A U.S. District Court in Dallas ruled in favor of the plaintiffs. The case is now on appeal.

The "friend of the court" brief was written by lawyers from Georgetown University Law Center's Institute for Constitutional Advocacy and Protection. Its signers were brought together through Fair and Just Prosecution, a national organization that advises reform-minded prosecutors.

Other Floridians who lent their names include Aramis Ayala, the state attorney for Orange and Osceola Counties, and former Florida Supreme Court Justice Gerald Kogan.

The brief's authors argue that detaining people based on their inability to pay a bail, "offends the constitution, undermines confidence in the criminal justice system, impedes the work of prosecutors and law enforcement officials, and fails to promote safe communities."

They also advocate for a risk-based system where each defendant would undergo an individual assessment to evaluate their risk of not showing up for future court appearances or trial, or committing more crimes while freed. They say there are better methods for determining who gets released and who has to stay in jail.

A similar lawsuit in Houston ultimately led a local court there to revise its bail policies, eliminating cash bail for most misdemeanor offenses.

Some jurisdictions have passed legislation eliminating cash bail in favor of risk-based assessment systems. It happened in California in September. A new law there forces counties to establish pretrial services agencies to evaluate whether someone should be released from jail and under what conditions.

• • •

Bail reform hasn't gained much ground in the Sunshine State.

A 2017 case in Jacksonville challenged the use of a bail schedule for misdemeanor crimes, but a federal judge later dismissed the case.

The chief judge of the Hillsborough Circuit, Ronald Ficarrotta, said the issue hasn't been pushed locally.

"We haven't had substantive discussions about it here in Hillsborough County," Ficarrotta said.

The current bail schedule, which was enacted by the chief judge in 2018, standardizes bail bond amounts based on the severity of an alleged criminal offense. Ordinance violations and second degree misdemeanors are set at \$250. First-degree misdemeanors and non-felony DUI cases are \$500. Bail is set at \$2,000 for third-degree felonies, \$7,000 for second-degree felonies, and \$15,000 for first-degree felonies.

Bail is not automatically assigned for certain offenses until the defendant gets a hearing in front of a judge. These include arrests for extremely serious crimes like murder and sexual battery. It also includes arrests for domestic violence, violations of probation and gang-related crimes.

Warren said he supports a risk-assessment model "in theory," but such an overhaul would have to come from the Florida Legislature.

State Sen. Jeff Brandes, R-St. Petersburg, has sponsored legislation that would allow chief judges to institute a risk-assessment system within their own circuits in Florida.

Fierce opposition to these efforts comes, naturally, from the bail bond industry.

"We have not seen any evidence that risk assessments deliver different results," said Jeff Clayton, the executive director the American Bail Coalition.

Clayton noted that the issue has not gained as much traction in Florida as it has in other states. He said that's partly because judges set bail for defendants soon after they're arrested, instead of relying solely on bail guidelines.

"The fight is over whether you can have a bail schedule or not," he said, "and if you can, what does due process look like?"

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DAN SULLIVAN

Tampa Courts and Federal Courts Reporter



Guest opinion: Idaho must eliminate computerized discrimination in its criminal justice system

Rep. Greg Chaney February 6, 2019



Idaho Rep. Greg Chaney

The most sacred responsibility of any lawmaker is to ensure that we protect the people we serve. That means everybody, not just certain select groups. Unfortunately, when it comes to criminal justice in Idaho, existing practices in the state threaten the very concept of fairness guaranteed to all of its citizens. The current use of risk assessment to determine the fate of people who have been arrested and charged with committing a crime represents a fundamental failing of our system.

So what are risk assessment algorithms and what do they do? Basically, they accumulate a bunch of data, and then using arcane computations, determine which factors correlate with a higher risk of committing a new crime, as well as the risk of failing to appear in court as required. Next, categories of risk are created — either low, medium or high, or using a numerical scale of increasing risk, e.g., one through six. Judges and other government officials then use this information to label people, i.e., put them into categories for purposes of sentencing or setting bail and conditions of release.

Unfortunately, studies have shown that risk assessment is flawed. In 2016, ProPublica published a report entitled *Machine Bias: There's Software Used Across the Country to Predict Future Criminals. And It's Biased Against Blacks*. The title says it all. Research by the authors revealed that the algorithm used in part to predict recidivism for purposes of sentencing, was biased against African-American defendants. Called the COMPAS tool, it was also the subject of a lawsuit in Wisconsin, in which a criminal defendant asserted that it was similarly biased against men.

The subsequent reaction has been extremely strong. Late last year, a policy statement calling for the nationwide elimination of pretrial risk assessments was issued by 110 national civil rights groups, which included the Leadership Conference of Civil Rights Organizations, ACLU, and NAACP.

With all that in mind, what are we doing in Idaho to address and fix the flaws in our system? The answer is stark, problematic and deeply disturbing: absolutely nothing.

Accordingly, this week I introduced legislation that would put Idaho at the forefront of this issue. It aims to ensure that all of our citizens — wherever they came from, whatever they look like and whomever they may be — are able to enjoy the equal protection of our state laws. If we are to be a truly free people, it is crucial that we make every effort to protect individuals from computerized discrimination.

The bill is very straightforward. It states that tools that are not shown to be free of bias against protected classes cannot be used in Idaho. Second, it brings needed sunshine and transparency so that criminal defendants, judges, prosecutors and the general public are able to scrutinize the tool and the recommendations it makes.

For any lawmaker to stand on the sidelines, knowing there are serious issues with bias in these algorithms and to do nothing about this problem, is to evince a lack of courage that is

contrary to the values of Idaho going back to statehood. Esto Perpetua, our state motto, means “Let it be perpetual.” In this critical matter, we must also guarantee that the right to equal protection under the law and to be free from discrimination is a perpetual right to all people in our great state.

Rep. Greg Chaney, R-Caldwell, is an Idaho State Representative, representing House District 10.

Bill Clamps Down on "Racially Biased" Algorithms Used in Trials



Critics say computer programs that perform risk assessments on defendants in criminal cases aren't blind and actually contain racial bias. (pixel2013/Pixabay)
February 14, 2019

BOISE, Idaho – Critics of computer algorithms that predict someone's risk of committing a crime say they're tinged with racial bias.

A bipartisan measure in the Idaho Legislature aims to make the algorithms transparent and ban those that show bias.

Civil rights groups, including the ACLU and NAACP, have raised concerns about discrimination in pretrial risk assessment algorithms, which analyze a person's likelihood of not showing up for trial or committing another crime.

Republican Rep. Greg Chaney of Caldwell says some of these programs have been shown to over-predict this likelihood with African-Americans.

"The rate of error is far lower for Caucasians, and it overestimates the likelihood that they will not commit an additional crime," he explains. "And that's been borne out by studies of what the computer models predicted up front versus what actually happened in the real world, where these particular programs have been deployed."

Chaney says risk-assessment algorithms are just taking off in Idaho.

[House Bill 118](#), with Senate support from Democrat Cherie Buckner-Webb of Boise, would require programs to be validated as "free of bias" by the Idaho Supreme Court before being used.

The algorithms evaluate risk based on factors such as age when a person was first arrested and history of substance abuse to determine a score.

But Chaney says much of what goes into calculating the score is secret. He compares it to dystopian science fiction.

"It's like the 'Minority Report' in real life," he states.

"It's a secretive, computerized calculation that actually is used to help determine, in many cases around the country, how many years of someone's life they lose to incarceration.

"For that to be one, a computerized process and number two, a secretive process is quite frightening."

Chaney says these types of algorithms could potentially be useful, but only if they are completely transparent. The bill currently is awaiting a hearing.

Eric Tegethoff, Public News Service - ID

HOUSTON CHRONICLE

Bond companies sue Harris County judges, sheriff over new bail rules

By [Nicole Hensley](#) and [Mike Morris](#) Updated 6:34 pm CST, Thursday, February 14, 2019



Photo: Mark Mulligan, Houston Chronicle / Staff Photographer

Alec Karakatsanis, who led a class action lawsuit against the county on behalf of indigent defendants challenging the county's cash bond system, listens to a press conference regarding new bail reforms for the county at Texas Southern University in Houston, Thursday, Jan. 17, 2019. The new rule allows qualifying misdemeanor arrestees to be released on a personal bond rather than a cash bond.

A Harris County judge has sided with lawyers for the Harris County Sheriff's Office and a slate of new Democratic magistrates vying to loosen misdemeanor bail rules this weekend, rather than grant a request of three bail bond companies that would have delayed the start of the proposed revisions .

The companies argued Thursday that the court-ordered bail reform — believed to be a key step in a lengthy legal fight over the pre-trial detention of poor, low-level offenders — would jeopardize their Houston bail bonds business.

“They won’t get to write as many bail bonds as they did before and they won’t make as much money as they did before,” said Allan Van Fleet, a lawyer representing the judges.

The bail reform is intended to relieve financial disparity among offenders. It would automatically qualify 85 percent of people arrested on misdemeanors for release on no-cash bonds, county officials have estimated. Those arrested for bail violations, repeat drunken driving and family violence would be the only exceptions.

“You got money, you can get out of jail. If you don’t, you stay there,” Van Fleet explained of the current system. “All kinds of bad things happen — you lose your job, you lose you car, you plead out to things you didn’t do just to get out of jail.”

The reform, however, would still require defendants to appear before a magistrate or judge within 48 hours, at which time they also could qualify for no-cash bonds.

The reform, the companies argue, violates state law because it would guarantee many defendants a specific type of bail without first providing them individual hearings before a magistrate, and because it would require the sheriff to reject some bonds that otherwise would be valid under state law, among other reasons.

“We have a constitutional right to make our living by bail bonds and if they want to amend the way the things are, they can do that but it still has to be by state law,” said Kevin Pennell, who represented Set ‘Em Free Bail Bonds, A Better Bail Bond and Advantage Bail Bonds in the county suit filed Thursday.

Eightieth Civil Court Judge Larry Weiman countered the argument before he denied the order.

“Doesn’t the court have to balance the constitutional right of the defendants, those who are arrested and charged with a crime,” Weiman asked, before resetting the temporary injunction hearing to March 11.

The judges elected in November 2018 announced the revised bail rules shortly after taking office last month, and chief U.S. District Court Judge Lee H. Rosenthal signaled she would support the proposal at a Feb. 1 hearing in the long-running bail reform lawsuit that now is expected to be settled.

The landmark litigation began in 2016, when attorneys and civil rights groups sued the county on behalf of defendants jailed for days because they could not afford bail on low-level offenses.

In 2017, Rosenthal issued a preliminary injunction upending the county’s bail system, which relied on a set schedule that dictated amounts based on the crime and not on a consideration of a defendant’s ability to pay. Finding that practice unconstitutional, the judge ordered the county to start releasing low-level defendants on no-cash bonds within 24 hours of their arrest.

The county appealed that ruling, and the U.S. 5th Circuit asked Rosenthal to retool the order, so she gave officials 48 hours to release inmates instead of 24. The misdemeanor judges again appealed, but those Republican officeholders were swept out in November and replaced with Democrats, who withdrew the appeal and announced the proposed bail rules.

Van Fleet warned the judges would have faced contempt of federal court for failing to implement the changes had the judge ruled in favor of the bonds companies. Additionally, the lawyer said the order would have continued to weigh financially on Harris County and those jailed and forced to miss work in order to “scrounge money to make that bond.”

The reform would dramatically reduce the daily in-custody cost, he said.

The preliminary results of the proposed rules are slated to be reviewed on March 8 before Judge Rosenthal.

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Houston Bondsmen Fight to Restore Bail for Misdemeanors

JAMES PALMER
February 15, 2019

HOUSTON(CN) – A group of bail bond companies claim Harris County criminal court judges and the Harris County sheriff unconstitutionally changed bond requirements for individuals arrested on misdemeanor charges, threatening their business.

In January, Harris County Criminal Court at Law judges voted to adopt a new bond rule granting all misdemeanor arrestees a personal recognizance bond, or “PR bond, releasing them on the spot without posting bail.

The rule stems from a 2016 lawsuit by the American Civil Liberties Union claiming misdemeanor arrestees’ due process rights are violated when they sit for days in jail without a hearing because they can’t afford to post bail. In May 2017, U.S. District Judge Lee Rosenthal found the bail system unconstitutional and ordered Harris County to begin releasing low-risk arrestees on unsecured bonds if they affirm in an affidavit that they cannot afford to post bail.

In February 2018, the Fifth Circuit affirmed Rosenthal’s finding.

Harris County spent \$9 million fighting the ACLU litigation, but dropped its fight in January after a fleet of new judges, district attorney and sheriff were elected in 2018.

Plaintiffs Sharon McClelland, Kelvin Hampton Sr. and Mario Garza say in their Harris County District Court lawsuit filed Thursday that their “right to make a living by writing surety bail bonds is a protected liberty and property interest under the Texas constitution,” and the rule change doing away with bail for misdemeanors violates that right.

The plaintiffs claim they are caught in the middle of a debate between keeping the public safe and ensuring criminal defendants show up for their court dates, and protecting arrestees due process rights.

Before the county dropped its appeal, the bail bond industry said in friend-of-the-court briefs there is no constitutional right to affordable bail. According to the industry, courts run smoothly because the bail businesses track down arrestees who do not show up for hearings.

The plaintiffs, who have a direct stake in the rule change, are “just trying to get a seat at the table” in navigating the dichotomy between adherence to state and federal law, as well as protecting the rights of both themselves and the arrestees affected by bail bond rules, their attorney Kevin Pennell said in an interview Friday.

Pennell said when Judge Rosenthal ruled that arrestees must be given no-cash bail releases, she swung the pendulum too far from the county’s prior bond policy of using a predetermined schedule that arrestees may or may not have been able to afford.

According to Pennell, the defendant judges were “taking liberties with state law” by simply releasing misdemeanor arrestees, only making a handful of exceptions for crimes like domestic violence and repeat drunk driving offenses.

Because Rosenthal is a federal judge, Pennell said her ruling “can give the policy a clean bill of health” at the federal level but cannot address the state laws associated with bail bonds. He believes the bail industry’s lawsuit will help find a middle ground to comply with both state and federal laws.

Neither the defendant judges – who are sued only as policymakers and not in their judicial capacity – nor Sheriff Ed Gonzalez could be reached for comment by press time.

The plaintiffs seek a temporary restraining order and temporary injunction blocking enforcement of the new rule.

Pennell is with the Pennell Law Firm in Houston.



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Harris County

LAWSUIT ASSERTS HARRIS COUNTY JUDGES CIRCUMVENTED DEFENDANTS' CONSTITUTIONAL RIGHT TO BAIL

News Release
Friday, February 15, 2019

Lakewood, Colorado – A lawsuit involving the on-going fight between bail reform and the legal right to bail was filed Thursday (February 14) in the State District Court in Harris County, Texas.

The case of McClelland v. Salgado pertains to actions taken by all 16 misdemeanor Criminal Court at Law judges in Harris County who, it is alleged, circumvented the constitutional right to bail when they ordered the release of 85 percent of all defendants who were in jail at the time, leaving 15 percent with no recourse whatsoever.

The lawsuit has its roots in the federal civil rights case of ODonnell v. Harris County. Plaintiffs in that case argued that they were unlawfully denied the right to bail because of their inability to pay the amount prescribed. Last August, the U.S. Court of Appeals for the Fifth Circuit ruled that there is no fundamental right to be free from any form of wealth-based detention.

As part of settlement negotiations in the ODonnell case, the 16 misdemeanor judges -- 15 of whom were newly-elected -- adopted Local Rule 9.1, which ordered the release of 85 percent of all defendants without bail. In so doing, it is alleged, the constitutional right to bail was effectively denied to all defendants when it was removed as an option.

Judge Lee Rosenthal, who presided over the ODonnell case, has not yet entered a decree and no settlement has been reached.

With McClelland v. Salgado, bail bondsmen argue that they have a protected property right to engage in the business of bail bonding in Texas. Further, they assert that defendants have a right to use the services of a bondsman when allowed under the Texas constitution and state statute. Their lawsuit alleges that Rule 9.1 violates Texas law in six separate respects.

In addition to the 16 Harris County misdemeanor Criminal Court at Law judges, Sheriff Ed Gonzalez is also named in the suit, and is accused of being complicit with the actions of the judges.

The plaintiffs are asking that an injunction be issued, preventing the Rule 9.1 policy from coming into further effect, and also demand an immediate hearing on whether the policy should be temporarily enjoined pending the outcome of the case.

About the American Bail Coalition

The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States. Comprised of the nation's largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilize its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions. www.ambailcoalition.org



Houston Public Media

A SERVICE OF THE UNIVERSITY OF HOUSTON

HARRIS COUNTY

Bondsmen Sue Harris County Judges Over New Rule To Release Misdemeanor Defendants

A policy set to go into effect this week means approximately 85 percent of misdemeanor defendants would qualify for personal recognizance bonds.

[ALVARO 'AL' ORTIZ](#) FEBRUARY 15, 2019, 1:04 PM



Roy Luck/Flickr

A bail bond office in Houston, near Minute Maid Park.

Three Houston bail bond companies have sued Harris County's 15 misdemeanor judges and Sheriff Ed Gonzalez over a new rule that will release all individuals arrested for a misdemeanor on no-cash bonds, with some exceptions.

The new policy, known as Local Rule 9.1, was written by the county's misdemeanor judges who were elected last November and will start being implemented Saturday, February 16. The lawsuit accuses Gonzalez of being complicit with the judges.

Individuals arrested for domestic violence, repeat drunken driving offenses and bond violations would not qualify for automatic release. Those defendants would have to appear before a judge within 48 hours to determine their risk, but they might also qualify for personal recognizance bonds in some cases.

Under the new rule, approximately 85 percent of people arrested on misdemeanors [would automatically qualify for release on no-cash bonds](#), according to the county's pretrial services division.

Arguments of the lawsuit

The lawsuit contends the rule effectively denies defendants their constitutional right to bail by removing it as an option.

The lawsuit also argues defendants have a right to use the services of a bondsman, when allowed under the Texas constitution and state statute.

Another argument is that judges should have discretion to set bond and the lawsuit alleges the new rule takes away that discretion in violation of Texas law, as [Houston Chronicle](#) reporter Gabrielle Banks told [Houston Matters](#) on Friday.

Banks said the bail bond industry is in the cross-hairs if poor people are no longer subject to costly bonds, especially for misdemeanors. "It's going to take a bite out of the bail industry and the bail industry is watching very, very closely to see what happens," she added.

Livelihoods

The lawsuit also argues the new rule threatens bondsmen's livelihoods.

The bondsmen asked the judge to issue an injunction to prevent the rule from going into effect, but that request was denied.

The Office of Harris County Attorney Vince Ryan, which represents the misdemeanor judges, didn't respond to a request for comment about the lawsuit.

Harris County's cash bail system has been under litigation in federal court since 2016 and a settlement is currently being negotiated.



Suit alleges Harris County judges circumvented defendant's constitutional right to bail

By [David Yates](#) | Feb 15, 2018



HOUSTON – A lawsuit involving the on-going fight between bail reform and the legal right to bail was filed Feb. 14 in Harris County District Court.

The case of McClelland v. Salgado pertains to actions taken by all 16 misdemeanor Criminal Court at Law judges in Harris County who, it is alleged, circumvented the constitutional right to bail when they ordered the release of 85 percent of all defendants who were in jail at the time, leaving 15 percent with no recourse whatsoever.

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According to a press release, as part of settlement negotiations in the ODonnell case, the 16 misdemeanor judges -- 15 of whom were newly-elected -- adopted Local Rule 9.1, which ordered the release of 85 percent of all defendants without bail. In so doing, it is alleged, the constitutional right to bail was effectively denied to all defendants when it was removed as an option.

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The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the U.S.



MINORITY REPORT SCIENCE FICTION COULD BECOME REAL IN IDAHO



The film starred Tom Cruise (L). Photo by Justin Sullivan/Getty Images.

BILL COLLEY February 15, 2019

Imagine a computer predicting the likelihood of you committing a crime in the future. It sounds far-fetched and straight out of the Tom Cruise film *Minority Report*.

While not quite as sophisticated as seeing into the future what exists today is something called “risk assessment algorithms”. Data is fed into a program and predicts the possibility of bail jumping (flight risk), future repeat offenses and level of potential violence. A similar approach is already used by the state’s corrections department and could be coming to court systems.

State Representative Greg Chaney is from Caldwell. A lawyer, he’s concerned minorities and men could be unfairly treated by the risk assessments. The result could also cost the state and you, the taxpayer, money. Previous studies of the program have alarmed

organizations like the American Civil Liberties Union. The ACLU is known for filing legal challenges when courts are viewed as unfair.

Chaney has the chilling details at [this link](#). He's the sponsor of House Bill 118, designed to stop the use of the data.



Companies sue over new bail rules by Houston-area judges yesterday

POSTED: FEB 14 2019

HOUSTON (AP) — A group of bail bond companies has filed a lawsuit seeking to stop new rules in Texas' most populous county that would allow most misdemeanor defendants to be released on no-cash bail bonds.

The lawsuit was filed Thursday in state district court in Houston.

It was filed in response to a new policy approved last month by a group of misdemeanor judges in Harris County, where Houston is located.

The new policy was announced as part of efforts to help settle an ongoing federal lawsuit over the county's bail system, which was found unconstitutional for people arrested for lesser offenses.

The bond companies' lawsuit alleges the new policy violates Texas law and threatens their livelihood.

A Harris County Attorney's Office spokesman didn't immediately reply to an email seeking comment.



Bell County judges reviewing bonds for criminal defendants

[BY DEBORAH MCKEON | TELEGRAM STAFF](#)

February 18, 2019



BELTON — Bell County district judges are reviewing bond amounts set by justices of the peace to keep Bell County from possibly being sued, a Jan. 23 letter from the judges to attorneys said.

The bonds to be reviewed will be those in felony cases where the person hasn't made bond.

Hearings are being held in the courts of 27th District Court Judge John Gauntt, 264th District Court Judge Paul LePak and 426th District Court Judge Fancy Jezek.

"On a temporary basis, we will hold hearings in each of our courts," the letter said.

The letter, signed by the three judges, said it hopes to hear about 10 cases per hour. The hearings won't replace hearings on motions to reduce bail or writs for bond reduction.

These hearings are meant to be short, informal and no record will be made of the proceedings, according to the letter.

Attorneys for the state and defense have to be there, and attorneys are told to speak with their clients in the courtroom before the hearing.

The review process may only be temporary because work with other courts and judges will help make sure processes are in place to provide fair and reasonable bail.

Reasons to review

Several Texas counties have been sued by the American Civil Liberties Union about the procedures used to set criminal bail in some cases, and bail reform legislation was filed during the last legislative session — but didn't pass.

Bills supporting bail reform will probably be proposed again, the judges said in the letter.

Former Bell County Justice of the Peace Claudia Brown in February 2017 set a record-setting \$4 billion unconstitutional bond for Killeen murder suspect Antonio Willis — a bond that was reset several days later by a district court judge.

Brown's attorney, David Fernandez, argued during a trial to remove Brown from office that Bell County justices of the peace intentionally set unfair bonds — and violated the constitutional rights of defendants — but never been disciplined or had repercussions for doing it.

Fernandez pointed out that Brown, who was removed from her elected position last week, identified the bail system wasn't fair to low income defendants.

"Turns out Judge Brown was right and Bell County and its judges were wrong," Fernandez said.

Brown's trial ended Wednesday when jurors unanimously voted to remove her from her elected position — something that had never occurred during the 33 years County Attorney Jim Nichols has been employed by Bell County.

Fernandez didn't know Monday if the paperwork, signed by visiting state District Judge Stephen Ables, was completed yet. Ables' signature formally removes Brown from her position.

The State Commission on Judicial Conduct previously officially reprimanded Brown and ruled she was swayed by partisan interests, public opinion or fear of criticism.

When justices of the peace magistrate a defendant, the defendant isn't asked whether or not they can financially make bond, Fernandez pointed out as part of his defense strategy.

Justice of the Peace Bill Cooke was called to the stand during Brown's trial. Cooke told Fernandez he didn't know Bell County district court judges were evaluating the bonds they set.

Cooke indicated during his testimony that justices of the peace don't use preset bonds.

Push for reform

Federal judges said Texas' bail practices are unconstitutional and prevent defendants from being released from jail before trial because they're too poor to pay the set bond amounts. As a result, Texas Supreme Court Justice Nathan Hecht told the Texas Legislature the system needs to be reformed.

Bills were filed recently that would create a tool for judges to use within two days of an arrest and help them make "more-informed" decisions. The tool would help judges look at a defendant's risk of skipping court hearings or being a danger to the public and/or victims. In the proposed system, defendants with a lower risk factor would be released at no cost. However, judges could deny bail and lock up those who are a threat.

Aaron Booth filed a lawsuit against all of the Galveston County district court judges, county court-at-law judges and the district attorney.

Booth was jailed at the Galveston County Jail because he couldn't pay his bail. His bail was set from a fixed schedule.

Booth was arrested April 8 for a felony drug possession charge. His bond was set at \$20,000, the minimum amount under Galveston County's felony bail schedule. He had no attorney before his bail was set and no one asked if he could afford bail. Booth said he'd have to stay in jail because he couldn't afford to pay bond to get out and could suffer consequences because of it.

The premise is that poor people are unjustly treated in the Galveston County system.

Dallas and Harris counties also were sued over how bonds were set. Federal officials said the counties keep people in jail because they are not able to pay bail. A lawsuit was filed Thursday against 16 misdemeanor judges and the sheriff a group of Harris County bondsmen. The lawsuit claimed 85 percent of those in the jail were released, leaving 15 percent with no way to attain release because bond was not made available to them.

dmckeon@tdtnews.com

Bill to regulate bail algorithms survives, likely to be cut

By NATHAN BROWN nbrown@postregister.com February 19, 2019



BOISE — A bill to restrict the use of pretrial risk assessment algorithms in Idaho is still alive but some major changes are expected.

As originally drafted, the bill would have only allowed the use of such algorithms if they could be proven to be free of bias based on race, gender, or any other protected category. After more than an hour of testimony from people on both sides of the issue, the House Judiciary committee voted to send the bill to the House's amending order.

The intent, said sponsor Rep. Greg Chaney, R-Caldwell, is to strike most of the bill but leave intact a paragraph that says information about how the algorithms work will be public and algorithm vendors cannot use trade secrets as a reason not to disclose that.

"It's not quite as far as we wanted to go, but it would still be a step in the right direction," Chaney said.

Many Idaho counties use computerized risk assessment systems to assign a rating to someone who has been arrested and help the judge make a determination as to bail or pretrial release. While no problems involving racial bias with these algorithms have been reported in Idaho, reporting by the investigative journalism nonprofit ProPublica a couple of years ago found issues in other states.

Chaney said the bill was necessary to make sure such problems don't arise here. He said people are becoming desensitized to the increasingly intrusive role of technology in everyday life, and he wanted to make sure this didn't result in technology being used to deny people due process.

"Ronald Reagan said freedom is never more than one generation away from extinction," Chaney said. "We did not pass it to our children in our bloodstream. It must be fought for, protected and handed on for them to do the same."

Speaking for the Idaho Association of Criminal Defense Lawyers, Mark Manweiler said addressing the financial bias inherent in the cash bail system — i.e., a wealthier defendant is more likely to bond out — should be the priority. Manweiler said lawmakers should expect to see a proposed constitutional amendment next year to get rid of cash bail in Idaho, as several states have done, and that groups that represent the bail industry have been fighting against the use of algorithms.

"This is a preemptive strike by the bond industry to try to get your attention and get you against what's coming," he said.

Rep. John Gannon, D-Boise, tried to get Manweiler to elaborate but committee Chairman Tom Dayley, R-Boise, ruled it not relevant to the bill at hand. Manweiler said after the meeting that he couldn't say much more other than that numerous criminal justice stakeholders are working on a bail reform proposal.

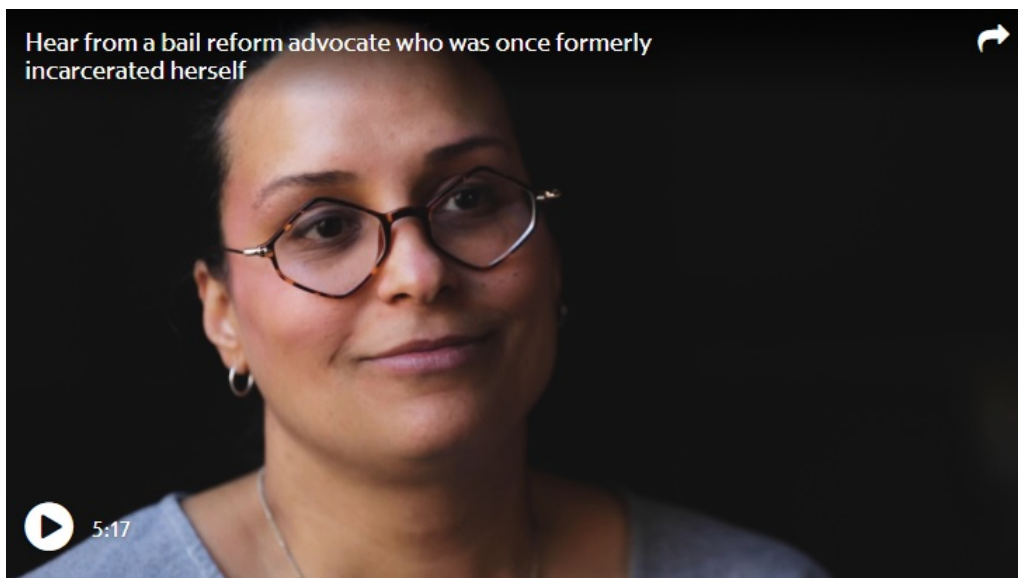
The Idaho Sheriffs Association also opposed the bill, while the American Civil Liberties Union of Idaho supported it. The ACLU sued the Idaho Department of Health and Welfare in 2012 after its use of a computer program led it to cut some developmentally disabled people's Medicaid benefits. The ACLU won in court several years later. ACLU Idaho lobbyist Kathy Griesmyer said that while she would rather not see computer programs used at all in making bail decisions, adding restrictions such as in Chaney's bill would help address the group's concerns about potential bias and abuse.

Reporter Nathan Brown can be reached at 208-542-6757. Follow him on Twitter: @NateBrownNews.

THE NEWS & OBSERVER

If not cash bail, then what? Here are 6 solutions — and their potential problems.

BY JOSH SHAFFER
FEBRUARY 21, 2019



Kristie Puckett Williams was being held on a \$167,000 bond when she took a plea deal in order to deliver her twins out of state custody. Now she's a Regional Field Organizer for the ACLU of NC's Campaign for Smart Justice, advocating for bail reform. By [Casey Toth](#)

RALEIGH - *This is a three-part look at the state of bail reform in North Carolina. [Here's how the system works.](#) And here is the story of one woman who pleaded guilty [so she wouldn't give birth in jail.](#)*

In jails nationwide, nearly two-thirds of all inmates are waiting for their trials to start — presumed innocent and convicted, so far, of nothing.

This statistic, taken from a [2016 study by the U.S. Justice Department](#), is often quoted by advocates for reform, who argue that keeping defendants locked up before their trials is both expensive and unfair.

Many among that jail population remain in their cells only because they cannot afford their bail, either in cash or as a percentage paid to bail bondsman.

“The one who has money is going to be able to go home,” said John Clark, senior manager of the Pretrial Justice Institute in Washington, D.C., speaking to judges and prosecutors in Raleigh last month. “The one who doesn’t have money is going to stay in jail.”

Advocates pushing for change face a powerful obstacle — the bail industry. Its total revenue reached \$2 billion in 2018, according to the market research firm ibisworld, and it has not shied from the political fight that threatens its future.

In California, the [bail industry collected more than 500,000 signatures](#) to block a new law outlawing cash bail, putting the question to a statewide vote.

And in North Carolina, the industry keeps a steady political presence. In 2018, the N.C. Bail Agents Association PAC gave \$26,000 to candidates in the General Assembly, all of them Republicans, including Senate leader Phil Berger and House Speaker Tim Moore. The PAC has also given to Democrats over the years.



The purpose of bail is to give a defendant financial incentive to show up for court. But how exactly does it work? By Nicole L. Cvetnic / McClatchy

Last year, the nonprofit National Institute on Money in Politics [ranked the North Carolina's bail agents second-highest in the nation for political contributions](#), totaling \$148,300 between 2009 and 2017.

If changes are made to the bail system in North Carolina, the question becomes: If money doesn't decide freedom, what replaces it?

As advocates push for reform, and their critics push back, these approaches have emerged.

Issue citations

A criminal summons can replace an arrest for many minor crimes, requiring a court appearance without going to jail first. These can be issued by a police officer who would normally serve an arrest warrant, and they carry the same penalty for failing to show up for court.

Downside: Police have balked at the idea of freeing the accused before trial, calling it risky and appearing soft on crime.

Expand pretrial release

Wake County already keeps between 500 and 600 people in its pretrial services program.

Eligible defendants sign a contract to follow a set of guidelines that could include calling a case worker each week, showing up for all court dates, sticking to a curfew and getting drug and alcohol treatment.

Downside: As of 2016, only 40 out of 100 North Carolina counties offered pretrial services. While such services are estimated to be much cheaper than jail, they are not free. The most recent annual budget for pretrial services in Wake County is \$543,000. After bail reform in New Jersey, counties sued over the "unfunded mandate" of adding bureaucracy and equipment to monitor people waiting for trial.

Send reminders

In many counties, people who failed to show up for court make up a large slice of the jail population.

To remind people of their court dates, many counties already offer electronic notices.

Downside: Many people charged with low-level misdemeanors don't have access to email or texts. Some lack even a physical address.

Change the law

Both Wake County District Attorney Lorrin Freeman and District Court Judge Robert Rader say some North Carolina laws need to be changed.

For instance, if defendants fail to appear in court, even if they were in the hospital and have documents to prove it, the bail must automatically double.

"What we all agree is we don't need to be holding people who are not a flight risk or a public safety risk," Freeman said. "If we are, we have to be evaluating why that is happening."

Hurdle: No bills have yet been filed in the North Carolina General Assembly to address bail reform.

Use a public-safety checklist

This year, Haywood County west of Asheville started a pretrial release program that requires judicial officials to follow a flowchart for all people charged with misdemeanors.

The chart for low-level offenders, such as those charged with trespassing, asks 13 questions. Among them: Does the case involve drug trafficking, a sex offense, a deadly weapon or violence? Does the person charged have a history of failing to appear in court or violating probation?

If no boxes are checked, the defendant is released on a written promise to appear, into someone else's custody or given an unsecured bond, meaning no money is required.

"We're avoiding detaining people based on an inability to pay," said Chief Superior Court Judge Bradley Letts.

Mecklenburg County is trying a [similar pretrial system](#), assisted by a \$2 million grant from the MacArthur Foundation.

Cases get run through a checklist, and if no serious threat to public safety or chance of skipping out on court can be seen, the defendant goes home until trial. In its first year, the county saw a 10 percent drop in jail population.

Downside: Many civil rights groups, including the NAACP and ACLU, [have opposed this sort of assessment](#) process. A common criticism is that the questions negatively impact minorities because the same biases that can lead to arrest keep them from scoring well on a checklist.

End cash bail completely

In August, California passed a law ending cash bail, replacing it with a risk-based assessment and essentially outlawing the bail bonding industry in the most populous state. [Gov. Jerry Brown promised it would make sure “rich and poor alike are treated fairly.”](#)

Hurdle: Shortly after the bill passed, however, a [group called Californians Against the Reckless Bail Scheme gathered 575,000 signatures and put the new law up for popular vote](#) in 2020.

“Over 50 civil rights groups opposed the now-stopped Senate Bill 10 in California, which is the exact no-money bail system we are talking about nationally,” Jeff Clayton, executive director of the American Bail Coalition, told The News & Observer.

New Jersey has also scrapped cash bail for most defendants, allowing it only if all other options have been exhausted. In 2017, the state released 94 percent of the roughly 144,000 people it charged, according to a [report from court officials](#). This dropped the pretrial jail population by 20 percent.

The bail bonding industry sued in federal court on behalf of Brittan Holland, a man charged in a bar fight who, as a result of the state’s new risk assessment system, was forced to wear an ankle bracelet before his trial rather than pay bail.

“Plaintiff Holland’s liberty is sharply curtailed,” the lawsuit said. “Among other things, he cannot shop for food or basic necessities and cannot take his son to baseball practice.”

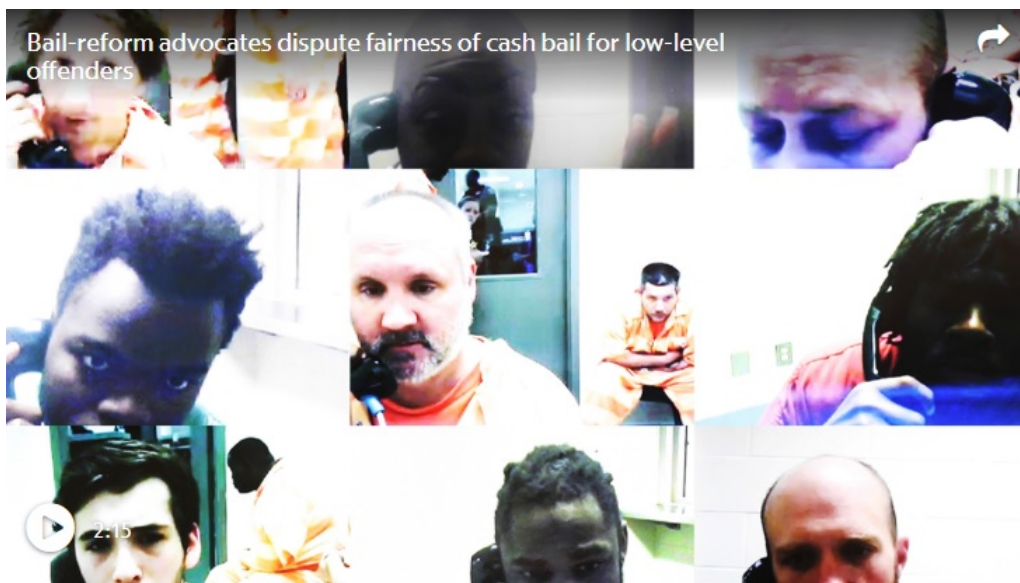
The courts ruled against Holland and Lexington National Insurance Corp.

THE NEWS & OBSERVER

Pay \$500 on a panhandling charge or sit in jail for five days. Should NC find a better way?

**BY JOSH SHAFFER AND
DAVID RAYNOR**

FEBRUARY 21, 2019



NC court officials, judges and magistrates increasingly call for bail-reform so low-level, misdemeanor defendants can leave jail before their trials. Cash bonds and unsecured bonds often keep defendants behind bars because they cannot pay. By [Julia Wall](#)

RALEIGH - *This is a three-part look at the state of bail reform in North Carolina. Read one woman's story [here](#). And read about possible changes [here](#).*

On a chilly Saturday in January, Raleigh police arrested a 45-year-old homeless man on Old Wake Forest Road, charging him with begging from the intersection as he held a sign that read "Anything Helps, God Bless You."

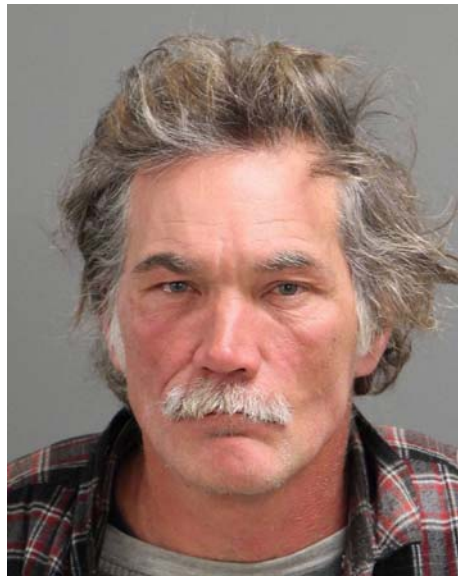
Herman Smith later that day faced a magistrate, who set his bail at \$500. Smith couldn't pay. So he sat behind bars in the Wake County jail until Monday, when

he spoke to a District Court judge.

In a striped uniform, Smith appeared through a video feed from the jail, about half his face showing on the courtroom monitor. “I have a job, sir,” he told the judge. “Is there any way I can waive my right to counsel and plead guilty today?”

He could not. Smith spent three more days in jail before pleading guilty and walking out with a fresh misdemeanor on his record.

By N.C. Attorney General Josh Stein’s estimate, jailing Smith for five days before his trial cost taxpayers \$350. Nationally, keeping defendants behind bars in advance of their judgment costs taxpayers \$14 billion, and Stein cites studies showing [\\$3 billion](#) of that is spent on low-level, nonviolent offenders such as Smith.



Herman Richard Smith III
CCBI

Momentum is building across North Carolina and nationwide to [scale back or even end the use of cash bail](#), which grants pretrial freedom based on the ability to pay. Under the type of bail reform Stein and other judicial officials now advocate, misdemeanor offenders on Smith’s level might get a summons to appear in court or supervised release before trial, sparing taxpayers the expense of housing them.

In Wake County, it costs \$70 per day to house an inmate in jail, compared to \$2.20 per day to supervise someone through a pretrial release program — a savings of \$67.80, according to statistics Stein’s office compiled. In Durham County, where District Attorney Satana Deberry has made bail reform a priority, the savings run more than \$90 a person.

To scale back cash bail, many advocates say, would not only save North Carolina the cost of an expanding jail population but emphasize that anyone charged with a crime is considered innocent until proven guilty. “Liberty is the norm,” wrote U.S. Supreme Court Justice William Rehnquist in 1987, “and detention prior to trial ... is the carefully limited exception.”

County	Cost per day to jail one defendant before trial	Cost per day for supervised release before trial	Savings
Wake	\$70	\$2.20	\$67.80
Durham	\$98.73	\$7.50	\$91.23
Orange	\$110	\$1.56 or \$5.50 with GPS	~\$100
Mecklenburg	\$174.09	\$13.16	\$160.93
New Hanover	\$80	\$8-\$20	\$60-\$72
Buncombe	\$80	\$8.23	\$71.77
Cumberland	\$67.50	\$4.48	\$63.02

Source: N.C. Attorney General

The [law in North Carolina](#) says judges and magistrates must confine people before their trials only if they pose a danger, threaten to flee or might destroy evidence. Yet statewide, 67 percent of people arrested for misdemeanors in 2017 got a secured bond from a judge or magistrate — meaning they had to pay, put up collateral or hire a bail bondsman to go free before their trials.



The purpose of bail is to give a defendant financial incentive to show up for court. But how exactly does it work?
By Nicole L. Cvetnic / McClatchy

Judicial officials in Wake County held 10,894 offenders on secured bonds for misdemeanors in 2017 — 85 percent of the people they faced. Even assuming

they spent only one night in jail, those low-level offenders cost taxpayers \$762,580 to house.

In January, Stein held a roundtable discussion at Wake Tech Community College in Raleigh, drawing roughly 100 judges, magistrates and district attorneys statewide. There, Stein questioned why cash bail has become the norm in a state with the opposite goal on its law books.

“Are we detaining people because of the risk they pose, or because of the size of their bank account?” he asked.

SITTING IN JAIL

Many people facing high-dollar bail amounts stand accused of violent felonies. Many others, such as Smith, have long criminal records, though in Smith’s case the charges almost always involve panhandling.

Other defendants bring a history of skipping out on court, a group that also includes Smith. But as a homeless man, he lacks both an address for court reminders and transportation to the courtroom — an on-the-edge lifestyle that advocates say keeps many from their court dates.

But plenty stay in jail before their trials on relatively minor charges: trespassing, shoving matches, having small amounts of marijuana or panhandling.

In Durham, Andrea “Muffin” Hudson served months of jail time in 2013 before pleading guilty, even though she believed herself innocent of her charges of exploiting an elderly person. As a mother, the prospect of waiting behind bars was the worst option.

“I know what it feels like to sit on that bed and say, ‘If I only had \$1,000, I could be home right now,’” said Hudson, now an advocate for bail reform with several Durham nonprofits, including Participatory Defense. “The longer you sit there, the more likely you are to return because you’ve lost so much sitting there.”

At the conference, Stein referenced a Kentucky study that showed low-risk people jailed for two to three days before trial were 40 percent more likely to commit new crimes than those held less than a day. Those jailed eight to 14 days were 51 percent more likely.

MISDEMEANOR RELEASE ORDERS IN 2017

Secured bonds on defendants arrested require money or collateral for release. Unsecured bonds do not require money for release but must be paid if bond conditions are not met.

COUNTY	SECURED BOND	UNSECURED BOND	OTHER TYPES OF ORDERS*	TOTAL RELEASE ORDERS	SECURED BOND %
CHATHAM	538	114	219	871	62%
DURHAM	2,893	904	1,203	5,000	58%
JOHNSTON	3,240	730	153	4,123	79%
ORANGE	1,196	376	357	1,929	62%
WAKE	10,894	1,233	667	12,794	85%

**Other types of release orders include written promise to appear, electronic house arrest and custody release.*

Source: N&O analysis of NC Administrative Office of the Courts data • [Get the data](#)

NO MIDDLE GROUND?

Massive bail reform is already happening elsewhere across the country.

California and New Jersey have moved to completely end their cash bail systems, and at least 10 states nationwide are changing how they handle the accused, according to the Pretrial Justice Institute in Washington, D.C.

This has drawn cries from the bail bonding industry and some civil rights groups that maintain without bail, the only options are in or out — a legal landscape that grants enormous power to judges and leaves no middle ground.

The trade association American Bail Coalition urged North Carolina not to take a sledgehammer to the existing system.

“The right to bail, monetary bail in particular, is a precious right and should not be denied to any persons on any level of the spectrum that are able to post bail and be released, whether that posting is \$1 or \$1 million,” wrote Jeff Clayton, executive director, in an email.

In Wake County, Chief District Court Judge Robert Rader said each decision pits a defendant’s liberty against the public’s safety, requiring that judges weigh the value of placing people behind bars when innocence is assumed versus making sure they don’t run off and hurt someone.

“It’s one of the hardest things a judge can do,” he said. “You don’t have a crystal ball.”



District Court Judge Eric Chasse presides over first-appearance hearings at the Wake County Justice Center in Raleigh on Jan. 23. In North Carolina, magistrates and judges set defendants' bond.
Julia Wall jwall@newsobserver.com

HOW THE SYSTEM WORKS

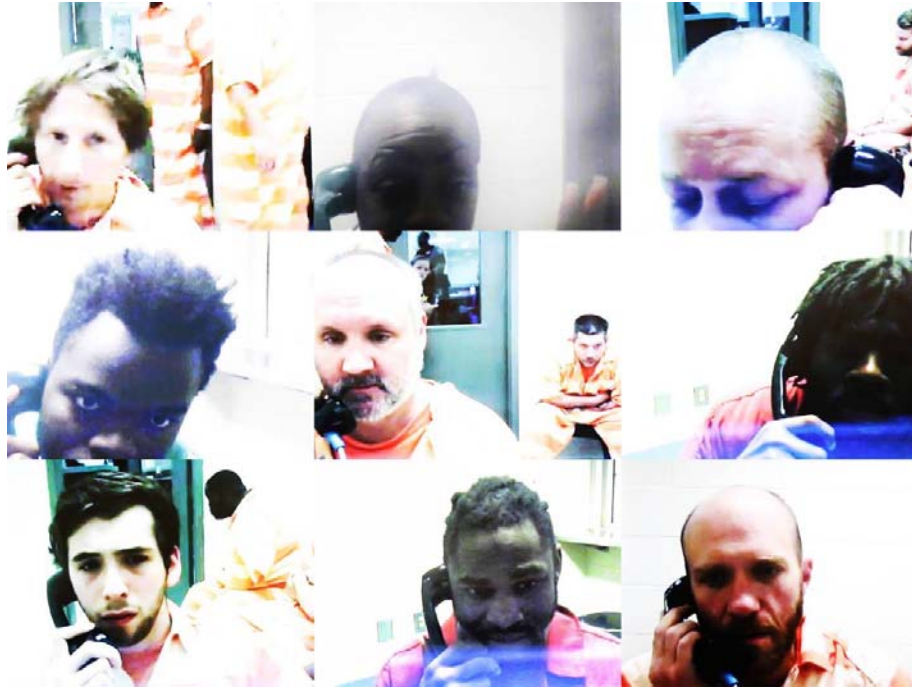
When Smith was arrested, police took him first to a magistrate — an independent, appointed judicial official. Magistrates are a defendant's first brush with the court system, and they have the power to keep defendants behind bars or send them home on a promise to come back. They work off a table of bond amounts that vary depending on the charge, set locally rather than at the state level.

In Smith's case, the magistrate chose to jail him with a bond at \$500, the lowest that is typically given.

His case, like many seemingly minor misdemeanors, is complicated by a long record for begging — more than a dozen charges. Wake County prosecutors also said he failed to show up for court five times in 2017 alone.

Generally, a homeless man does not have \$500. And bail bond agents often will not help free a client for \$500 because the amount they can be paid — 15 percent of the bond — isn't worth the risk.

In Wake County, every defendant gets a first appearance before a judge the following day or Monday after a weekend arrest, regardless of the charge. In many other North Carolina counties, this is not true, meaning a misdemeanor charge can create an even longer wait.



Dozens of defendants make their first court appearances in Wake County on Jan during their first appearances about whether or not they will work with a court appointed lawyer, their next court dates, and their bonds.

Julia Wall jwall@newsobserver.com

The point of bail reform is to clear the jails of people who don't pose any safety risk and aren't likely to flee.

"Why keep them in jail for a shoplifting charge?" asked Charles Caldwell, the chief public defender in Wake County. "Say if you were an 18-year-old that's been taking money out of the till at McDonald's. How much of a bond do you need? Are you a danger to society? You're very embarrassed and your momma is going to be mad."

When Smith appeared in district court in Wake County on the Monday after his arrest, he appeared with 28 other inmates in one hour, each of them given about two minutes' time to decide about a court-appointed lawyer and talk about the magistrate's bond.

Within those two minutes, the accused usually asked to go home on a written promise to appear in court or an unsecured bond, meaning they would pay the value only if they skipped court. They offered various explanations.

John Christopher Doumar

Charge: Begging and carrying a concealed weapon. "It was just a knife. I had it in my coat pocket. I've come to every court case."

Decision: \$500 unsecured bond. Go home.

Delphine Holder Williams

Charge: Failure to appear in court on a simple assault charge. “I thought I had court on the 16th, which is Wednesday. I didn’t know I had court on the 17th. The 17th, I was in the hospital because I have chronic asthma and COPD.”

Decision: \$500 secured bond. Back to jail.

FAILURE TO APPEAR

Not showing up for court is one of the most common reasons for being locked up before trial. In Forsyth County, Clerk of Court Susan Frye reported 33 percent of the jail population charged with failure to appear.

“Most say they forgot,” she said. “That’s our favorite word to hear.”

Missing a court date is serious: It triggers a new arrest and a bond that is double the first.

And while judges give stern reminders that showing up for court is the defendant’s responsibility, many simply lose track, said Caldwell, the public defender. This is especially true, he said, for clients with multiple charges on multiple days.

Further complicating the schedule: Court dates change regularly when lawyers on both sides ask for a “continuance,” or delay. Advocates at Stein’s conference noted that a person charged with a misdemeanor may show up for court on time twice, only to find the prosecutor asking for a delay due to a busy schedule. But when the defendant misses the third date due to a sick babysitter or a flat tire, there is no such lenience.

“Transportation can be very challenging,” said Hudson, the advocate in Durham, “to try to get on the bus with kids, or even have the funds to get on the bus. If they have a car, if they’ve been incarcerated for any amount of time, they won’t have money for gas. Or the car got impounded.”

KQED News

THE CALIFORNIA REPORT

Ending Cash Bail Is on Hold Until 2020, But Critics Aren't Waiting to Push Reforms



Signs advertise bail bond companies next to the Twin Towers Correctional Facility (R) on August 29, 2018 in Los Angeles. (Mario Tama/Getty Images)

When California [passed a law last year aimed at eliminating cash bail](#) in the state, the bail industry jumped into action, [gathering enough signatures to put the question before voters](#) as a referendum in 2020.

That referendum prevents Senate Bill 10 from taking effect until voters weigh in.

But in the meantime, California's pretrial system is continuing to evolve as supporters of bail reform push a slew of changes to what they see as an unfair system.

'The bail industry makes a lot of money off of people, and they're going to do everything they can (to preserve the status quo).' State Sen. Bob Hertzberg, author of Senate Bill 10 Those initiatives are taking place in courtrooms across California and in the state Capitol — and they could provide a road map for the future if voters end bail in 2020.

Among the initiatives:

- Gov. Gavin Newsom wants to spend \$75 million to help courts experiment with alternatives to bail
- The state Judicial Council has set up a working group to help guide those efforts
- The state Supreme Court will soon rule on a case that could severely limit local courts' ability to require high bail amounts
- State lawmakers are considering legislation aimed at making sure alternatives to bail are equitable

State Sen. Bob Hertzberg, who wrote SB10, said while he's disappointed that the legislation is on hold until voters weigh in, he believes the extra time could help "engage the public to understand the truth about what's really going on" with the bail system, which requires someone accused of a crime to pay money for their freedom before they go to trial.

Hertzberg, D-Los Angeles, and other critics of bail argue that the system allows wealthy defendants to pay their way out of jail, while forcing low-income and often minority defendants to either languish in jail or pay hundreds or thousands of dollars to bail bonds companies.

"I totally expected a referendum," he said. "The reality is the bail industry makes a lot of money off of people, and they're going to do everything they can (to preserve the status quo)."



State Sen. Bob Hertzberg (D-Los Angeles), pictured in 2015. (Max Whittaker/KQED)

Hertzberg is pushing [legislation](#) that would require any counties experimenting with alternatives to bail to collect data on who is being released and under what conditions — data he hopes will help ensure that the same economic and racial inequities that exist under the existing bail system don't continue persist under alternatives to bail.

But it's a case before the state Supreme Court that stands to make the most sweeping immediate changes to pretrial detention.

Kenneth Humphrey "was charged with burglary and robbery based on allegations that he followed a fellow resident of his senior living facility into his apartment and stole \$5 and a bottle of cologne," said one of his lawyers, Katherine Hubbard, of the nonprofit Civil Rights Corps.

Humphrey's bail was set at \$600,000, then eventually reduced to \$350,000.

"But that was still far beyond Mr. Humphrey's ability to pay," she said.

So his attorneys challenged the high bail as unconstitutional — and an appeals court agreed.

If the state Supreme Court upholds that lower court decision, it could change the way release decisions are made across California, Hubbard said, by requiring prosecutors to prove that a person is too dangerous to be released — and if they're not, to set reasonable conditions for their freedom before trial.

Hubbard says she's optimistic that the state's highest court will uphold the ruling.

"The principles are at stake here are pretty much undeniable — that it's unfair that someone would sit in jail simply because they can't afford a monetary payment and that the right to pretrial liberty is fundamental, and you can't deprive a prisoner of that fundamental right without following the right procedures," she said.

Regardless of what happens in that case, however, the state Judicial Council is helping county courts explore alternative ways to assess whether someone is safe to be released from jail before trial — and if they are, what conditions need to be placed on them.

The Judicial Council recently created a working group that will advise counties on how to implement alternatives to bail, and Gov. Newsom wants to spend \$75 million to support those experimental pilot programs.

State Appeals Court Justice Marsha Slough is heading up the working group, and said the state funding will help the courts educate everyone in the criminal justice system.

"You know it's really a cultural shift. It's a sea change and we need not only staff, we need judges and we need our justice partners to really join in as we all try to shift into looking at pretrial detention in a totally different way," she said.

For its part, the bail industry is gearing up for the 2020 ballot.

Jeff Clayton, executive director of the American Bail Coalition, which represents the large surety companies that back bail bonds businesses, said he's optimistic the public will reject SB10 at the ballot box. He thinks the \$75 million that Newsom wants to spend on pretrial programs is a "waste of money."

Clayton noted that pretrial programs and cash bail have coexisted in some counties for years, and said he doesn't think the state needs to create a new bureaucracy to simply let more people out of jail without bail or other conditions.

And, he said, the bail industry is weighing whether to put a second measure on the 2020 ballot that would "redesign" the bail system — but he didn't have details on what that might look like.

BOISE WEEKLY

Rep. Greg Chaney

On bail algorithms, non-traditional alliances and moral outrage

By [George Prentice](#) [@georgepren](#)



Rep. Greg Chaney

Rep. Greg Chaney (R-Caldwell) says his name will be attached, as a sponsor or co-sponsor, to only a few proposed measures at the Idaho Statehouse this year.

"Certainly fewer than years past. I've been a bit more selective," he said. "Let's see, I'm a co-sponsor on the hemp bill."

That would be the much-discussed [House Bill 122](#) that, if approved, would differentiate the crop from marijuana, recognizing hemp as a commodity.

"But I would say I'm only going to attach my name to four or five bills this year. For me, lately, it's about building relationships, issue by issue," said Chaney.

One of those issues that warrants attention is what he says is racial and/or gender bias inside algorithms used to determine bail or conditions of release from jail pending trial. Chaney likened the algorithms, used every day in courtrooms across Idaho, to the movie *Minority Report* starring Tom Cruise. Readers may recall that the 2002 sci-fi film was the cautionary tale of a dystopian future where algorithms tagged innocent citizens for arrest, even though crimes had yet to be committed. [House Bill 118](#), which addresses that algorithm issue, is sponsored by Chaney, a staunch Republican, and Sen. Cherie Buckner-Webb (D-Boise), a staunch Democrat. Even more intriguing is the fact that the Idaho Sheriff's Association said it opposed the initial bill, while the American Civil Liberties Union of Idaho supported it. The bill has been sent to the so-called "amending order" of the House, meaning Chaney will have to rework some of the language of the initial measure, but he's still confident about its chance of success.

In between committee meetings and House floor votes, Chaney spoke with *BW* in his Statehouse office about his proposed bill and its unlikely supporters and detractors.

It's interesting to note where certain public and nonprofit entities have landed on this issue. Can I assume that you haven't, in previous measures, had the full support of the ACLU?

Just this morning, my wife commented on this strange dynamic. Yes, there have been bills that I've worked on that prompted protests or lawsuits from the ACLU. That said, the No. 1 partner on a bill that I sponsored last year, the Driving Without Privileges rewrite, was the ACLU.

The No. 1 rule in politics is: "It depends."

That's exactly right. I also joke that when you get to the House Committee on Judiciary, Rules and Administration, party affiliations shuffle. You're not necessarily a Republican or a Democrat. You have those in favor of reform and those in favor of tradition. When it comes to criminal justice issues, you have a really strange dynamic.

How would you best describe, to a layperson, the intent of HB 118?

There are computer programs that suggest to judges how much bail they should set for you or even how long a jail sentence they might hand down. And the way these computer algorithms work isn't available for inspection. It's a secret. And sometimes, we find that those results are heavily biased. We've heard testimony that 31 of Idaho's 44 counties are using systems like this, but we're not exactly sure what they're using. We had a professor from Boise State come in, representing himself, not the university, and he said the most disturbing thing is that when there have been attempts to look at the algorithms, they've been denied.

Are the software providers claiming that these algorithms are trade secrets?

Exactly. So, they don't have to turn it over. One of the things that we're going to be focusing on in the bill is public accessibility to the methodology.

Is that why this bill has been sent to the amending order?

Yes.

I've been around the legislature long enough to know that, often, when a bill is sent to the amending order, it's sent there to die. What's the chance that your bill survives?

I'm highly confident. I think the provisions that we're going to focus on in amending the bill will offer wide-ranging acceptability. I even think that those who may have initially testified against the bill would now be in favor of the provisions.

What are your deadlines?

I'm expecting this to hit the House floor for a full debate and vote, and then we need to get it to the Idaho Senate by Monday, March 4.

The broader issue of bail in Idaho is a fascinating topic. Do you expect more measures to surface, possibly in next year's session, that will focus on bail reform?

I would imagine. I think some of the early opposition to my bill this year is that they were afraid that it would run crossways with future proposals concerning bail.

Can I assume that you're hearing from constituents on your bill?

Absolutely, a lot of positive feedback. I'm all for using technology to predict things, but if we're going to shrug off something that's unconstitutional, that's horrible. That's unacceptable. If we don't have the political will or moral outrage to deal with this now, what's to become of us in the next 10 or 20 years?



Ending Cash Bail Puts The Berkshires In A National Conversation

By JOSH LANDES • FEBRUARY 28, 2019



The door of the Berkshire District Attorney's office in Pittsfield, Massachusetts.
JOSH LANDES / WAMC

Berkshire County joined a national movement this month when its district attorney implemented a no cash bail policy.

Democrat Andrea Harrington announced February 22nd that her assistant DAs had been instructed not to seek cash bail. She framed the move – which fulfilled promises made during her 2018 campaign – by describing a “immoral” criminal justice system with separate tracks for the rich and poor.

“People talk a lot about the criminalization of poverty as a critique on the criminal justice system, and the way that that critique plays out every day in courts in Berkshire County and across Massachusetts are when people are held who have not been found to be guilty of a crime – they’re accused of a crime – but it’s pretrial and people are held for non-violent offenses on low level bail of under \$500 because they can’t afford to pay the bail,” Harrington told WAMC.

ADAs will now have to justify requests for cash bail in instances where defendants are considered a flight risk or dangerous.

“Money bail is on its way out,” Jon Wool told WAMC. “I think most people who have watched criminal justice systems evolve see that its days are numbered and should be.”

Wool is the Director of Justice Policy at the New Orleans office of the Vera Institute of Justice – an independent national nonprofit that has been working on criminal justice issues since the 1960s.

“I think one has to start with the federal system, which has outlawed the detention based on a person’s inability to pay money for at least three decades, and so every place in the country in the federal courts, money can’t be set in amount that leads to a person’s detention,” said Wool.

Wool says from Washington D.C. to New Mexico, state and local systems are also working to eliminate cash bail, which he describes as “the main driver of excessive incarceration at the local level.”

“The state of New Jersey, beginning in 2017, virtually eliminated money bail in all its forms and has had excellent results – a reduction in unnecessary incarceration by about 30 percent over those two years with declining crime rates, both violent crime and overall crime rates,” he said.

In California, efforts to eliminate money from the bail system have met opposition from the bail industry. Wool says for-profit private companies working alongside the criminal justice system are motivated by revenue, not public interest.

"Bail bondsmen have their livelihood depend on putting a price on people's freedom, and reaping the benefits when people are able to pay," he told WAMC. "But they don't bear the burden of the cost that all taxpayers pay on jails that are larger than they need to be, larger than anywhere else in the world, of course, incarcerating people who aren't dangerous, who are simply unable to pay the price."

Beyond that, Wool says cash bail can make communities more dangerous – strictly on the basis of who can afford it.

"When somebody is truly dangerous, money bail allows them to decide whether they can get out or not," said Wool. "When a judge sets a money bail, it's an order to release the person. And if they have the money, they get to go home, and when somebody is too dangerous to be in the community, we've given up the opportunity to ensure that they are in fact detained."

"The purpose of bail is to guarantee appearance," counters Jeff Clayton. "And it shouldn't be used in every case, but when a judge has concerns that somebody's not going to show up for court, they should impose an appropriate bail."

Clayton is the Executive Director of the American Bail Coalition. He sees bail as a constitutional right and a vital tool for judges. The prevailing alternative to no money bail is preventative detention, which gives judges broad authority to detain defendants. Clayton says this poses a threat in and of itself, saying it will give the government more power to detain more people.

"I think the no money bail movement has hit a crescendo, and I think people are beginning to second guess whether replacing cash bail with this other system is better or whether we have to look for other alternatives," he told WAMC. "And what one public defender told me is we should have more doors out of the jail not fewer ways out, and for that reason we should keep bail but also find other alternatives for people – and that's probably where it's going to end up going."



Bail Industry: Ohio's Draft Reforms Will Increase Racial Bias in Courts, Taxpayer Costs

The bail bond industry pushed back Wednesday on draft recommendations of the Ohio Supreme Court panel examining reforms to the state's bail system, saying a move away from monetary hurdles to jail release toward broad-based risk assessment will increase racial bias in the courts, threaten public safety, and increase taxpayer costs for an already-burdened criminal justice system.

In its second meeting since Chief Justice Maureen O'Connor convened the Task Force to Examine the Ohio Bail System in January, members including Sens. Cecil Thomas (D-Cincinnati) and Robert McColley (R-Napoleon) and Reps. Tavia Galonski (D-Akron) and Brett Hillyer (R-Uhrichsville) heard presentations from a long list of witnesses led by John Handler, president of the Ohio State Bail Bond Association and central director of the Ohio Professional Bail Association, and Executive Director Jeffrey Clayton of the American Bail Coalition. Chief Justice O'Connor also attended the day's hearing.

Proposed amendments to Rule 46 of the *Ohio Rules of Criminal Procedure* rename the "Bail" section "Pretrial Release and Detention" and require judges to free defendants under the "least restrictive conditions" that will reasonably ensure public safety and the accused's appearance in court and respect for the criminal justice process, unless the court orders pretrial detention. Alternatives to detention include diversion, day reporting or "comparable alternatives." Judges could eliminate or lessen a condition of bail if they conclude it is no longer necessary.

"If the court orders monetary conditions of release, the court shall impose an amount and type which are least costly to the defendant while also sufficient to reasonably ensure the defendant's future appearance in court," proposed section (B)(3) states.

All courts would be required to review their bail bond schedule bi-annually to ensure it does not promote the "unnecessary detention of defendants due to inability to pay" [proposed (H)(5)].

Judges would make these determinations with the help of a risk management tool “when reasonably available to the court.”

Handler cited other states’ problems with computer-based risk management in setting bail and called the technology “unproven,” “unreliable” and “expensive.”

“If there is no potential for financial loss or threat of incarceration, why would a defendant show up knowing the system is underfunded [and] understaffed and there is great likelihood they will never be caught by the police?” he said, arguing that judges already assess risk “at a fraction of the price.”

In addition to the costs of a risk management database, Handler said courts would be left with the “assembly line justice” of a “mystery box” or “probability engine that crunches numbers in a vacuum.” He pointed to “vast implications of racial or economic disparity,” loss of privacy, and the “exact antithesis of equal justice under the law.”

“A defendant could be coerced into volunteering potentially damaging information with the dangled promise of a free release,” he said.

Handler also said the new rule increases bureaucracy and public funding, whereas the cost of the current system is born by bail bond professionals and defendants.

“It is beyond understanding why anyone would want to saddle the taxpayer ... with the cost of an unproven program,” he said, adding that bail reforms would threaten public safety and decimate the bail bond industry. “We cannot support a system which will put our businesses out of business and jeopardizes the people of the state of Ohio.”

Handler predicted “unintended consequences” that would take years to fix and urged task force members to instead “trust in judicial officers.”

Thomas asked whether the rule hadn’t instead proposed a “hybrid” system of risk assessment and recognizance bonds, but Handler said the latter does not require bail bonding. Ohio Public Defender Timothy Young questioned his contention that the amended rule would effectively eliminate bail and judicial discretion. Task force Chairwoman Mary Katherine Huffman, Montgomery County Common Pleas judge, agreed. Handler insisted the rules commission and a computer database would now make the decision.

Calling bail reform in other states “a complete failure,” Clayton slammed the mix of state and local control over Ohio’s court system and specifically its data reporting on bail. He commended the Ohio Criminal Justice System for a “credible job” gathering available bail statistics but said more is needed.

“This is the weakest state for data. Period. End of story,” Clayton said, conceding, however, that he is “no data mathematician.”

“We think a comprehensive data collection project should proceed, perhaps using an outside vendor, in order to get better information upon which to make decisions,” he said.

Galonksi agreed. “The elephant in the room: We don’t have the data.”

Clayton also addressed risk assessment tools. “Should they be used? One hundred and ten national civil rights groups say they should not,” he said, citing concerns over racial bias and transparency.

Demuth agreed. “At least half the race gap in pretrial detention is because of money,” he said.

Clayton predicted one unintended consequence for local funding with the move away from bail, “Most states have gone to preventive detention to fill the gap,” he said.

Sounding a skeptical note, McColley recalled the “sky is falling” cries against Ohio’s criminal justice reforms of recent years and “emotional pleas” for safety to the state Legislature.

Other task force speakers included President Molly Gaunther and Trustee Scott Fulton of the Ohio Chief Probation Officers Association; staff attorney and Second Chance Director Dorianne Mason of the Ohio Justice and Policy Center; Legislative Affairs Director Marc Ebel of Triton Management Services; Public Defender Mark Stanton and attorney John Martin of the Cuyahoga County Public Defender’s Office; sociology Prof. Stephen Demuth of Bowling Green State University; Executive Director Holly Matthews of the Lucas County Criminal Justice Coordinating Council; and Michelle Butts, acting director of regional court services for Lucas County Common Pleas Court.

Martin and Mason returned to the complaint of many when assessing the bail bond industry.

“The person who is poor should not be treated any differently than the person of means,” Martin said.

Story originally published in *The Hannah Report* on February 27, 2019. Copyright 2019 Hannah News Service, Inc.



March 5, 2019

Idaho transparency bill would increase public access to pretrial risk tools

Measure, which invalidates the frequently used “trade secret” exemption, is one of first in nation

Written by [Beryl Lipton](#) • Edited by [Miranda Spivack](#)

Idaho is one step closer to becoming the first state to make pretrial risk assessment algorithms more transparent and open to public scrutiny, addressing long festering concerns about the risk to civil rights of automated pretrial tools in criminal justice.

[House Bill No. 118](#), approved by the Idaho House on March 4th, requires that “all pretrial risk assessment tools shall be transparent” and all records of their use be “open to public inspection, auditing, and testing.”

19-1910. PRETRIAL RISK ASSESSMENT TOOLS. (1) All pretrial risk assessment tools shall be transparent, and:

(a) All documents, data, records, and information used to build or validate the risk assessment and ongoing documents, data, records, information, and policies surrounding the usage of the risk assessment shall be open to public inspection, auditing, and testing;

(b) A party to a criminal case wherein a court has considered, or an expert witness has relied upon, a pretrial risk assessment tool shall be entitled to review all calculations and data used to calculate his own risk score; and

(c) No builder or user of a pretrial risk assessment tool may assert trade secret or other protections in order to quash discovery in a criminal or civil case.

[View the entire document with DocumentCloud](#)

It also invalidates the frequently used “trade secret” exemption that has made it more difficult for anyone challenging the algorithms to get details of how they work. The bill now goes to the state Senate.

“[T]he bill ... really focuses on the transparency piece,” Representative Greg Chaney (R-10), the bill’s chief sponsor, told MuckRock. Chaney said he was “shocked and appalled” by risk assessments, similar to the 2002 film “[Minority Report](#),” based on a [Philip K. Dick story](#), in which police use technology to predict future crimes. “If there is something in there that either explicitly or implicitly brings in a bias, at the very minimum, we need to make sure that that’s always open to scrutiny, to litigation, to let the statisticians look and identify problems and let the public know what’s going on and to allow the process to work that way.”

Pretrial risk assessments estimate the likelihood that an arrested individual, if released, will fail to appear for a court date or will commit another crime. The assessments generate scores using a variety of metrics, such as criminal history. Judges are then able, but not obligated, to use these ratings when setting bail.

Some advocates for bail reform say the assessments can help reduce the prison population. Nationally, a quarter of people imprisoned, or about 615,000, are pretrial detainees in local jails. Of those, approximately [415,000](#) have not been convicted previously of a crime, according to the research group [Prison Policy Initiative](#). According to advocates such as the [Pretrial Justice Institute](#), assessment tools can be used to find alternative support services besides jailing someone, including aid for people suffering from mental health issues or substance abuse. They also can be used to encourage judges to release someone on personal recognizance without bail, if the assessment tool suggests that person will show up for the next court date.

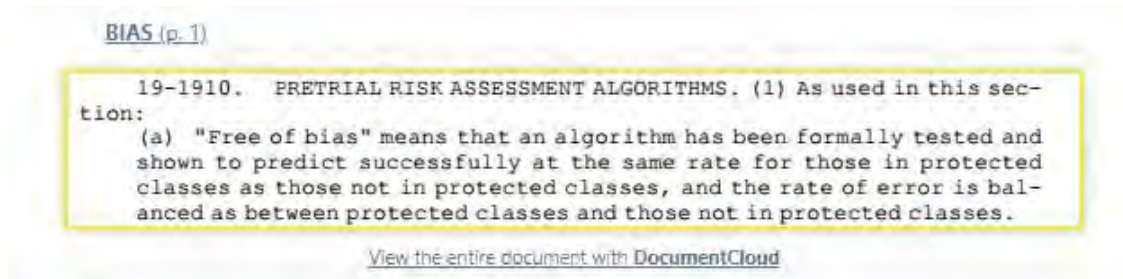
The experience of New Jersey points up the potential benefits of the tools. The state saw its pretrial prison population decrease in 2017 by 20 percent from 7173 to 5743 individuals in its first year of reducing the use of cash bail. The state relied on the Arnold Foundation’s [Public Safety Assessment tool](#), which was developed and has been actively promoted by the privately-funded organization. The tool, which considers nine different data points in its decision making and has been validated against local data where it’s used, has been adopted by [dozens of jurisdictions](#), making it one of the most common pretrial evaluation tools in use.

Amber Widgery, Senior Policy Specialist at the [National Conference of State Legislatures](#), told MuckRock that so far states have not discouraged the use of risk assessment tools but have tried to encourage best practices.

“I’ve never seen state legislation moving against risk assessment. I think it’s generally the broad picture across the states that risk assessment is a good thing as long as we’re adopting current best practices and the most current research based on this issue.” The state legislators organization [has partnered with the Arnold Foundation](#) to track pretrial policy at the state level.

However, civil rights groups remain concerned that computational models, like those used in the risk assessments, have a substantial downside and could automate and reinforce prejudices against groups that have long been subject to discrimination. Last year, more than 100 non-profit organizations, including the American Civil Liberties Union and the National Association for the Advancement of Colored People, signed a letter opposing any jurisdiction’s use of pretrial risk assessments. As part of that statement, the groups recommended that “[A] pretrial risk assessment instrument must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community.”

An [earlier version](#) of the Idaho House bill prohibited the use of any risk assessment tool not found in validation studies to be “free of bias.”



Chaney said the House Judiciary Committee struck that language after becoming “bogged down” in discussion of the technical requirements for validating bias or lack of bias. Though no longer explicitly required, the measure requires public access for validation studies if anyone uses them.

Chaney estimated that 33 of the 41 counties in Idaho currently use a form of pretrial risk assessment but with little transparency. None, he said, use Northpointe’s COMPAS assessment, a proprietary tool which a 2016 [ProPublica investigation](#) said inflated risk for African-Americans and underestimated Caucasian risk rates.

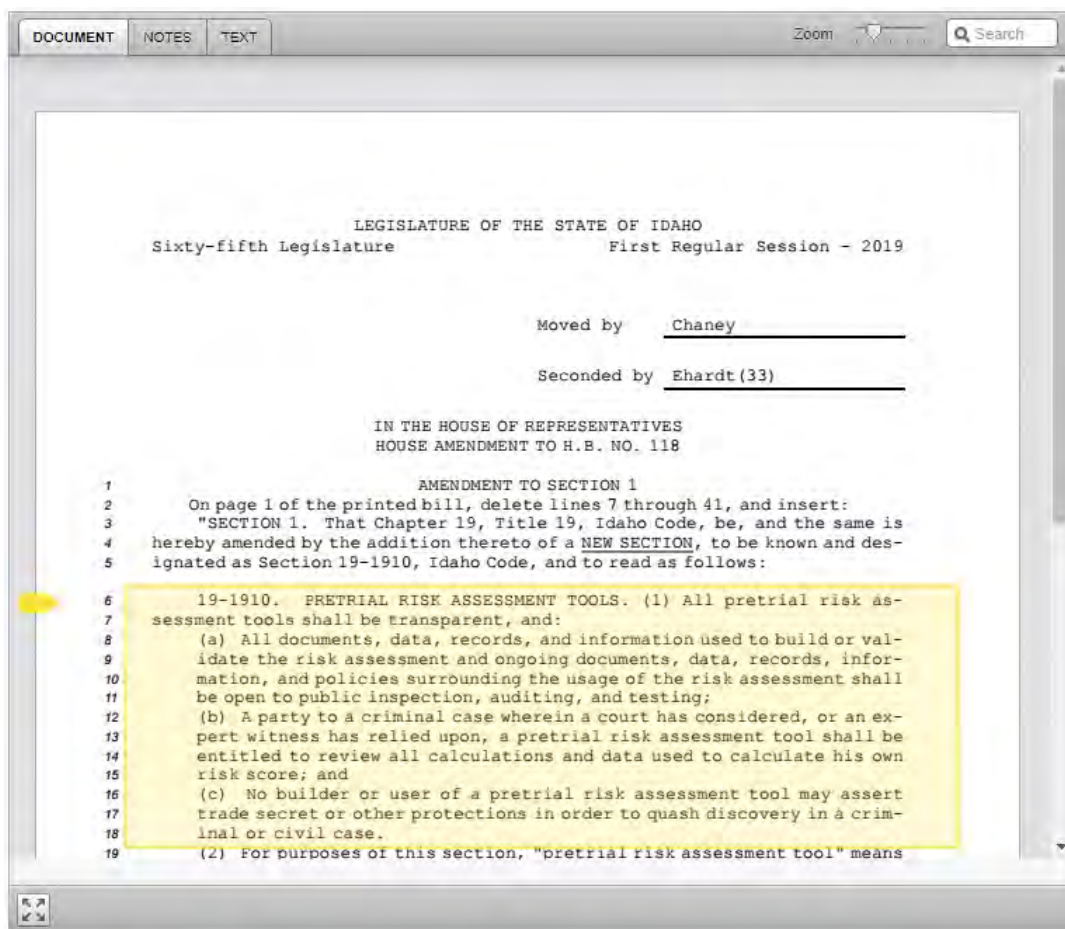
Northpointe was subsequently allowed to keep its algorithm private under trade secret rules during the Wisconsin case [State vs. Loomis](#), in which the defendant argued that an algorithm that could not be viewed publicly violated the right to due process. However, the Wisconsin Supreme Court ruled that cases containing a COMPAS report should include a “written advisement listing the limitations,” among them the need for

the software to be tested for accuracy using data from local populations. The U.S. Supreme Court refused to hear an appeal of the decision, allowing the Wisconsin high court ruling to stand.

Chaney is adamant that the public needs substantial and detailed information about pretrial release algorithms and the tools that use them.

“Any pretrial release tool used in assessing risk must be absolutely open to public records request to understand the methodology, the criteria, the weight, the scoring,” Chaney said. “That has to be absolutely open to the public.”

The current version of HB 118 is embedded below.



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Based on a work at <https://www.muckrock.com/project/algorithmic-control-automated-decisionmaking-in-americas-cities-84/>.

Image via [Idaho Legislature](https://www.muckrock.com/project/algorithmic-control-automated-decisionmaking-in-americas-cities-84/)



Colorado could limit jail time and bail for poorest defendants

A trio of bipartisan bills, which supporters say will increase fairness and save money, is moving through the Capitol now

By **Alex Burness** - March 14, 2019



Natalia Marshall, the niece of Michael Marshall, spoke at a news conference to support cash bail reform on March 14, 2019. (Photo by John Herrick)

Colorado is primed to take a major step toward reforming a bail system that systematically and disproportionately punishes the poorest of the poor.

Lawmakers say they are hoping it will keep thousands of people a day out of Colorado jails and save taxpayers some of the more than \$23 million spent every year to keep people locked up before they go to court.

A trio of bipartisan bills was introduced last week — two in the House, one in the Senate. The House measures seek to move away from practice of keeping people in jail pretrial because they can't afford to bail out. The practical effect would be to keep only those who pose an actual risk to the public in pretrial lockup. The Senate bill would limit the amount of time people spend in lockup waiting for their court appearances.

The three measures are not a package deal and will likely have slightly different coalitions of support and opposition, but together they're being hailed as an incremental step toward reforming Colorado's bail system.

"Our criminal justice system is, as a factual matter, criminalizing poverty," Colorado Attorney General Phil Weiser said during a House committee hearing Thursday for two of the bills. "If you can't afford to pay bail, if you can't afford to pay bond, you're going to sit in jail. And you're going to sit and sit and sit."

An estimated 50-60 percent of the (at least) 13,000 people in the state's county jails on any given day are awaiting trial, and a relatively small amount of money can mean the difference between freedom and lockup. Those who can afford to bail out after being booked head home, while those who can't — that is, homeless and lower-income people, who are often also people of color — stay behind bars for days or weeks on end.

These new bills would also have the effect, supporters argue, of providing some relief to an overburdened jail system in Colorado. A snapshot of all county jails in Colorado from one day in November 2017 showed many facilities at or above 90 percent capacity. Pueblo's jail was at 194 percent. Weld's had just 12 available beds.

Additionally, data from the state's Joint Budget Committee shows that it costs about \$100 per night to keep someone in a jail, so bill supporters also tout their cost-savings potential.

“The real issue right now is we have jails overcrowded, people sitting in jail today because they can’t afford to pay to get out,” said Rep. Leslie Herod (D-Denver). “I want to fix this now. More fixes will come. But I’m not willing to wait and allow people to continue to sit in jail who have not been convicted of a crime, simply because they can’t pay.”

The bill in the trio that’s so far garnered the most attention — HB-1125, for which there was a press conference Thursday at the Capitol — would apply to low-level offenses only, such as public urination, trespassing and open-container laws, which generally carry bonds of no more than \$250.

The other reforms Herod’s talking about may include misdemeanor or felony offenses — though that’s not the focus at the moment.

“This is a start,” said Elisabeth Epps, a self-identified “abolitionist” who leads the Colorado Freedom Fund. “It’s a beautiful start.”

There’s also some chance the state Commission on Criminal and Juvenile Justice (CCJJ) will try to get the legislature’s support for comprehensive reform through a referred 2020 ballot measure.

So, what would these three bills do?

House Bill 1125

Introduced by Reps. Matt Soper (R-Delta County) and Herod with support from the ACLU, [this bill](#) aims to eliminate the use of monetary bail for low-level offenses, except in rare cases.

It looks like a good bet to become law — Republicans and Democrats on the House Judiciary Committee were united in their support for it Thursday, voting 11-0 to advance it to the House floor.

Bail is a payment a defendant, or friend or family member, makes to get out of jail. Bond is a payment someone else — an outside company, often — pays on a defendant's behalf to get them out.

But bail is set so low for the kinds of crimes touched on by HB-1225 that bondsmen usually won't even bother getting involved.

These are the most minor offenses, typically associated with homelessness. Soper likened the seriousness of the offenses in question to "making a U-turn on Main Street."

They are offenses like the one **Michael Marshall** committed in 2015. He was a mentally ill man jailed for allegedly trespassing on the grounds of a Denver motel where he frequently stayed. He had a psychotic break in jail, and sheriff's deputies smothered him and put a "spit guard" on his mouth. Marshall choked to death on his own vomit.

"He was held on \$100," said his niece, Natalia Marshall, at a press conference for HB-1125. "And his family wasn't even notified. ... We could've gotten him bailed out of jail easily with no questions asked, but unfortunately he ended up being murdered."

The bill is aimed at people like Marshall, people with so few means that even a few days or a week in jail can be life-changing, with profound potential snowball effects.

Those effects run the gamut from potential job loss, child care or custody challenges, towed vehicles, critical appointments missed.

"It is so expensive to be poor," Epps said.

House Bill 1226

This bill was also introduced by Herod and Soper, and will be carried in the Senate by Pete Lee, a Democrat from Colorado Springs. The bill is backed by the CCJJ.

Among the requirements in the bill: each judicial district in the state would have to develop a new pretrial screening process, creating a risk-assessment algorithm for every person processed through the system. It would also require every county in Colorado to have a pretrial services program to supervise defendants.

Some in the industry, including Jeff Clayton, the Denver-based executive director of the American Bail Coalition, argue that could be very expensive. “Counties don’t have the money, the state doesn’t have the money and if they go to voters, the voters probably won’t vote for it,” he said. HB-1226 could face the steepest opposition of the three bills.

It would largely eliminate the right to bail as we know it, in favor of supervision and non-monetary conditions. Progressive groups and those seeking to reform the criminal legal system applaud that goals, but harbor deep concerns about the risk-assessment tools that would be used if this bill is passed. The risk being assessed, theoretically, concerns likelihood to reoffend, to endanger others or to flee and not show up to court.

The bill, said the ACLU’s Rebecca Wallace, could result in overreach. It “uses very expansive language at every stage that restricts release and will probably result in the detention of people who are not violent and will not flee.”

Several reformers interviewed for this story suggested the risk-assessment aspect of HB-1126 may need to be reworked if the bill is to receive wide support and pass. In committee on Thursday the bill was laid over for future discussion, indicating there’s some workshopping to be done before the bill can move forward.

Senate Bill 191

Like the House bills, [this one](#) is bipartisan, too. It’s being sponsored by Republican Vicki Marble of Fort Collins and Democrat Jeff Bridges of Greenwood Village. The bill is backed by the ACLU, and it has the potential to affect a broader population than the two House bills.

Critically, the bill would require that a court has to hold a bond-setting hearing for a defendant within 48 hours after that person is arrested. As it stands, some defendants must wait much longer than that — four or five days, sometimes — before their bond is ever set by a judge. That tends to happen in under-resourced courts that are only open for a few days of the week, or that close for extended periods on holidays.

“I’m sorry if the (judges) have got a tee time. Move it,” said Marble, who previously worked 20 years in the bond industry. “These guys, constitutionally, should get to see a judge.”

The 5th Circuit Court of Appeals — notably, a conservative court — recently held that a person can’t be held longer than 48 hours before a bond setting. On those grounds, Marble and many others are outraged by the fact that many in Colorado do wait around for more than two days before seeing a judge. Only a handful of counties have court open six days a week, so in much of the state a person arrested on a Friday will wait until at least Monday to see a judge — and longer if it’s a holiday weekend.

This problem, too, disproportionately affects the poor since most people who are arrested can afford cash bail. That’s because most people who get arrested have the opportunity to pay cash to get out quickly. Someone who’s spending three or four days waiting to arrange bond couldn’t pay their way out up front.

SB-191, which hasn’t been heard in committee yet, appears to have broad backing so far. It would also require sheriffs to allow people to post bond within two hours of it being set, and would limit bond processing fees to \$10.

Marble said it might well have been folded in with the House bills for one omnibus, but “that would’ve been a mess.”

“We’re trying to deal with the timeline here,” Marble added.



The Black Box of Bail Algorithms: One Sensible Solution

MARCH 14, 2019

Jeff Clayton

Edited by: **Kelly Cullen**

JURIST Guest Columnist Jeff Clayton, Executive Director of the American Bail Coalition discusses a recent Idaho bill proposal that seeks to reform the use of risk assessment algorithms in bail hearings. . .

Much needed legislation, which reins-in use of algorithms to determine who stays in jail pending trial and who gets out, recently passed in the Idaho legislature. **House Bill 118**, sponsored by Representative Greg Chaney (R-Caldwell), is first-of-its-kind legislation that addresses inherent flaws in the criminal justice system. The bill calls for the algorithms to be transparent and certified free of any bias. It's a good start to addressing a problem that has afflicted not only Idaho, but the entire nation.

What are these algorithms and how do they work? They start by taking data concerning individuals who have been previously involved in the criminal justice system and then breaking it down into categories. A typical risk assessment tool will have around ten factors, including the number of previous convictions in a person's criminal history, but

there can be as many as 200. For example, age is a factor that correlates highly to the probability that a defendant is going to flee or commit a new crime while out on bail. (It should also be pointed out that age is one of the biggest predictors in criminal justice. Individuals typically “age out” of crime as they get older.) Regression analysis is then performed on the data, which reveals mathematical correlations. After the entirety of data is analyzed, an overall risk score is produced, which is then given to judges.

There are a number of fundamental problems with the algorithms. Generally, their analyses are not shared with either the public or criminal defendants. They don't get to see the data that was used to build these tools. Also, they are not allowed to examine the regression analysis, nor are they permitted to perform even basic checks on the data, such as confirming the math.

As to why this is the case, the reasons lie in the murky world of corporate self-interest. In many instances, for-profit corporations are the builders of the algorithms, which includes COMPAS and Arnold Ventures, LLC. These entities are fearful of others stealing their information and building their own algorithms, thus taking them out of the game. Also, the algorithms are often constructed from information gleaned from FBI crime files, as well as state and local criminal history databases. Builders and users of the algorithms are claiming that existing laws prohibit disclosure of such information to the public. In addition, these same algorithm proprietors are asserting they are trade secrets and thus protected from disclosure.

Another issue is that the majority of algorithms used around the country have never been tested for racial or other bias. Arnold Ventures had a research center called RTI International perform a study, which unsurprisingly, concluded that their risk assessment tool was free of bias. Conversely, legitimate researchers from *ProPublica* found just the opposite for the COMPAS tool, damningly concluding that it was, in fact, “biased against blacks.”

To my knowledge, there are few risk assessment tools that have ever been tested for racial bias. Despite their being deployed in dozens of jurisdictions across the country from Virginia to California, rarely, if at all, has anyone even bothered to check on what should be a foundational aspect of the other algorithms. Because of this systemic oversight, we can't really know if the tools are inherently biased, but there is evidence to suggest they are.

Yet another problem is that risk assessment algorithms don't seem to deliver on what they promise to achieve. They have been widely touted as being effective in decreasing pretrial incarceration and reducing new crimes while out on bail. However, after examining a variety of such tools, a paper published by the Minnesota Law Review concluded that they largely have little to no positive effect on the system, while even having a negative effect in a substantial number of cases.

Idaho's House Bill 118 attempts to solve these problems by first requiring that the algorithms are free of bias before they are used. Even more important, it calls for making the data behind them open-source. This will have a profound effect across the country, as it will allow researchers to conduct bona fide analyses as to whether these ubiquitous tools truly work and whether or not they address the glaring problem of racial bias in our criminal justice system.

H-118's call for nationwide transparency echoes recommendations made more than two years ago by New York University's AI Now Institute, which declared, "Core public agencies, such as those responsible for criminal justice, healthcare, welfare, and education (e.g., 'high stakes' domains) should no longer use 'black box' AI and algorithmic systems."

As the debate on algorithms grows louder—even as their use grows disturbingly more widespread—policy-makers would be wise to take a page out of the Gem State's playbook and carefully consider all the facts. If they do, they will also conclude that use of these black-box systems must come to an end, once and for all.

Jeff Clayton *has worked in both the public and private spheres on the bail issue; for the Colorado State Courts and Probation Department and as General Counsel for the Professional Bail Agents of Colorado. Currently Mr. Clayton serves as the Executive Director for the American Bail Coalition.*

Suggested citation: Jeff Clayton, *The Black Box of Bail Algorithms: One Sensible Solution*, JURIST – Academic Commentary, Mar. 14, 2019, <https://www.jurist.org/commentary/2019/03/jeff-clayton-bail-algorithm/>.

This article was prepared for publication by Kelly Cullen, JURIST Managing Editor. Please direct any questions or comments to him at commentary@jurist.org

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Op-Ed: Predictive Algorithms In The Justice System Must Have Aggressive Oversight

March 20, 2019 by [WLA Guest](#)

Failure to Appear (FTA)				New Criminal Activity (NCA)			
Risk Factor	Points	Total FTA Points	FTA Scaled Score	Risk Factor	Points	Total NCA Points	NCA Scaled Score
Pending charge at the time of offense	No = 0 Yes = 1	0 = 1 1 = 2 2 = 3 3 = 4 4 = 4		Age at current arrest	23 or older = 0 22 or younger = 2	0 = 1 1 = 2 2 = 2 3 = 3 4 = 3	
Prior conviction (misdemeanor or felony)	No = 0 Yes = 1	5 = 5 6 = 5 7 = 6		Pending charge at the time of offense	No = 0 Yes = 3	5 = 4 6 = 4 7 = 5 8 = 5 9 = 6 10 = 6	
Prior failure to appear in past 2 years	0 = 0 1 = 2 2 or more = 4			Prior misdemeanor conviction	No = 0 Yes = 1	11 = 6 12 = 6 13 = 6	
Prior failure to appear older than 2 years	No = 0 Yes = 1			Prior felony conviction	No = 0 Yes = 1		
				Prior violent conviction	0 = 0 1 = 1 2 = 1 3 or more = 2		



Written by [WLA Guest](#)

EDITOR'S NOTE: Risk assessment systems have been praised as a means of reducing the country's astronomic prison population and corrections spending by calculating the likelihood that a person will fail to return to court or commit a new crime if released.

Pre-trial risk assessment tools produce a recommendation either for or against an individual's release while they await trial. (These calculations are based on factors like an individual's prior convictions, if they have failed to appear in court before, current charge(s), education level, employment, age, and more.)

A number of California counties use risk assessment in bail decisions, including Humboldt, Imperial, San Francisco, Santa Clara, Santa Cruz, and Ventura. Los Angeles County is working toward piloting risk assessment as part of its bail system reform efforts, as well.

Many law enforcement agencies also use algorithms to predict crime hotspots and to identify people who may be guilty of future crimes. Last week, the LAPD caught heat over how its crime prediction systems are used, after an audit from the Office of the Inspector General suggested the way the tools are implemented may be producing biased policing outcomes.

As the use of algorithmic risk-assessment and predictive policing programs becomes increasingly common across the nation, a growing number of criminal justice experts, advocates, and lawmakers are raising alarm bells about the fallibility of these tools that wield so much power in the criminal justice system.

Critics argue that the predictive analytics are prone to perpetuate the racial and economic discrimination they are meant to reduce. These problems are often masked by too little oversight or transparency.

In the op-ed below, Idaho Rep. Greg Chaney (R-Caldwell), who recently introduced a bill to require pretrial risk assessment tools to be fully transparent and to be verified as bias-free, urges fellow lawmakers to bring sunshine to the algorithms used in their own justice systems.

-Taylor Walker

Using Computers to Predict Risk in Criminal Cases: What Went Wrong?

By Idaho Rep. Greg Chaney (R-Caldwell)

Steven Spielberg's 2002 film, *Minority Report*, was conceived on the seemingly far-flung premise that in some near-distant world of tomorrow, computers would be able to predict whether or not a person would commit a crime based on data. While the movie was somewhat of a disappointment critically and at the box office, it succeeded in doing what science-fiction films often do — forecast the future, while warning us about the possible ramifications when human wisdom does not keep up with advancements in science and technology.



Rep. Greg Chaney (R-Caldwell)

The fact is that jurisdictions all around the country are implementing laws that determine what happens to individuals in the criminal justice system based not on what they have done, but what they are predicted to do in the future. The computers used to make these prognostications have already been implemented in every state and their use is growing rapidly.

One of the most disturbing aspects of these systems is the issue of the risk assessment algorithms that actually determine how the computers work. They are essentially black-box technologies, which means information is put into the system and it spits out results. Depending on what it concludes, a defendant is either released for free, released under supervision and monitoring, or kept in jail with no recourse.

Unfortunately, there is no way to understand how these algorithms draw their conclusions. In theory, these systems work by taking a variety of data about human beings, breaking the data into categories and then using arcane math to figure out what factors may correlate with future behavior. This is called regression analysis.

Proponents of these technologies claim everything is transparent because they have disclosed the factors that go into calculating the score. But this is akin to going to a restaurant and being told the names of dishes on the menu, but not the ingredients that go into making them, nor any explanation of what you're actually eating.

Why would the builders and proprietors of the algorithms do this? The explanation may lie in the fact that many of the algorithms were created by for-profit corporations. For example, Arnold Ventures will not disclose how their system was built or allow anyone to see its underlying data. If it did, it would be a fairly simple matter for anyone to steal the algorithm and give it away for free. The same goes for COMPAS, another widely-used risk assessment tool.

Data derived from the FBI's crime files has been used to build some of these tools. Incredibly, the proprietors behind them have had the audacity to claim that federal law and regulation has prevented the disclosure of "sensitive information." They have also asserted trade secret privilege in order to prevent parties to criminal cases and even judges from ever seeing this crucial data, which logically, should be available to anyone for examination.

Risk assessment tools are being touted as not only effective, but also fairer than any system without algorithms. However, in practice, two things emerge: they don't work as planned and serious concerns have arisen that bias is actually baked into its implementation. Because of this, rather than helping, they are making things worse for those in protected classes who are mandated to be free from discrimination based on their race, national origin and gender.

Recent university studies from Dartmouth College and George Mason University have shown that algorithms are poor predictors of the future, with none coming to a correct conclusion more than 70 percent of the time. In the Dartmouth study, random individuals off the internet were solicited to make guesses against an algorithm. These random folks were able to predict more accurately than the algorithm. Nicholas McNamara, a Wisconsin circuit judge, complained that some people in his state incorrectly regarded its risk assessment tool as somehow allowing them to see into the future, "like a Magic 8 Ball that works."

As for bias, algorithms had previously not been tested for it in the 20-plus-years that risk assessment tools have been in existence. But with the dramatic increase in the use of these tools in recent years, has come heightened scrutiny of this possible component. It shouldn't come as a surprise that dozens of civil rights groups from coast-to-coast, including the ACLU and NAACP, have now come to their own conclusions that these systems are, in fact, biased.

Predictably, Arnold Ventures tested their system for racial bias using their own vendor and subsequently proclaimed that their algorithm was bias-free. COMPAS, on the other hand, was [tested by independent researchers at ProPublica](#), who came to the conclusion that their risk assessment tool was biased against African-American defendants. In light of these findings, I recently introduced legislation in my state of Idaho to bring much-needed light and transparency to this rapidly evolving process. I am also calling for a national wake up call to confront the reality behind the use of algorithms, following the lead of scholars at New York University, which created the socially-conscious AI Now Institute. Ultimately nothing less than draconian tools of injustice, the algorithms don't work as advertised and cause far more harm to society than good.

It is time we apply some much-needed wisdom to break free from the shackles of technology that we have imposed upon ourselves. I call upon my fellow legislators around the country to not allow what was once the farfetched premise of a science-fiction film to become a grim reality.

Greg Chaney is serving his second term in the Idaho House of Representatives representing Legislative District 10—which includes most of Caldwell. He has championed reforms to criminal justice, elections law, and taxation. In the House of Representatives, his committees include: Revenue & Taxation; Judiciary, Rules, & Administration; and Energy, Environment, & Technology.

Image: Arnold Foundation Public Safety Assessment – Risk Factor Weighting



Perspectives

The Criminal Justice System's Algorithms Need Transparency

By Greg Chaney | March 31, 2019, 8:02 PM EDT

The use of risk assessment algorithms in our nation's criminal justice system is expanding. The notion of this sounds innocent enough and maybe even pretty cool — a technologically advanced method solving the inequality in how people are handled after an arrest. Thanks to continuing advancements, building these models is now easier than ever before.

Unfortunately, the more one looks at the use of algorithms, the more clear it becomes that such systems are utterly lacking in transparency. In examining the landscape surrounding risk assessment, an Orwellian nightmare emerges: We are told to trust the forces behind the movement, and their claims that the algorithm was built properly and works as promised.

An article titled "Life, Liberty and Trade Secrets"[1] appeared recently in the Stanford Law Review and revealed that private providers of algorithms have asserted trade secret protections in criminal cases to protect their intellectual property. It applied to those built by nonprofit, for-profit or even government agencies in an effort to prevent criminal defendants from being able to challenge the integrity of the models.

The author, Rebecca Wexler, a visiting fellow from Yale Law School, provided several relevant case studies, including one concerning a person assessed by an algorithm at sentencing in a death penalty case in Pennsylvania, who was not allowed to scrutinize the source code.

She noted that the examples cited are not isolated, and that assertion of trade secret protection is a growing trend at every stage of criminal cases, from policing to parole.

Wexler also cited the case of Martell Chubbs, who was denied access to the source code for a forensics program that was used to convict him.[2] The California Court of Appeals ruled for the developer of the program. In the process, it likely became the first appellate court in U.S. history to extend a trade secret evidentiary privilege in a criminal case.

Shockingly, the privilege was not one that entitled the developer to a protective or sealing order, which would have made sense. Instead, it allowed the developer to “entirely” withhold the source code. As Wexler points out, the Chubbs case has thus formed the basis nationwide for a new body of case law which denies access to the underlying source code of algorithms used throughout the criminal justice system.

Wexler also noted that the issue is not receiving the attention it warrants. She concluded by suggesting that builders and users of such algorithms should no longer be permitted to hide behind the smokescreen of trade secrets, and called for state governments to take immediate action to prevent this from occurring in the future.

As disturbing as the notion is that defendants are denied the right to look at the very data and source code that is being used to keep them incarcerated, is the fact that the public is locked out as well. This prevents not just defendants from doing their own analyses of these systems, but also everyone else. This includes countless university researchers eager to perform critical research to determine whether these systems actually work and what their inherent flaws might be. There is no accountability whatsoever, which is a huge problem. At even the most basic level, it is impossible to check the math of these systems and verify that they were properly built.

As a legislator in the [Idaho House of Representatives](#), I knew the time had come to do something about the situation. Last year, there was a movement in my state, which encompassed the Idaho Supreme Court, to eliminate the right to bail by changing the state constitution and creating a system of risk-based preventative detention. Key to the new scheme was use of the aforementioned pretrial risk assessment algorithms. Because it was obvious that this was going to be a continuing hot-button issue, it was clear that there was an urgent need to get things right before we took such a drastic step.

A part of the process concerned getting additional background on pretrial risk assessments. One article, "Assessing Risk Assessment in Action,"[3] authored by Megan T. Stevenson, an assistant professor at the Antonin Scalia Law School at George Mason University, revealed the truth behind some commonly held beliefs about the algorithms.

Stevenson analyzed data from Kentucky, which was using Public Safety Assessment, a proprietary algorithm, developed by the Laura and John Arnold Foundation (now Arnold Ventures). She found that rather than causing mass decarceration, in practice there was only a trivial decrease in the jail population, and noted an uptick in failure to appear rates and pretrial crime. While risk assessments may have worked in some jurisdictions, evidence would seem to indicate that the upside from their use may be outweighed by their shortcomings.

Another significant document on the subject is a 2018 statement from The Leadership Conference on Civil and Human Rights. Representing 100 national civil rights groups, the organization stated, “we believe that jurisdictions should not use risk assessment instruments in pretrial decision making.”[4]

While banning assessments altogether is worth considering, such a move would probably be going a bit too far. Rather, it is in everyone's best interests to take heart from what the groups opined on the issue. They advised that “If in use, a pretrial risk assessment instrument must be designed and implemented in ways that reduce and ultimately eliminate unwarranted racial disparities across the criminal justice system.”

Anyone examining the assessments in use across the nation, including my state of Idaho, would see that there is scant evidence that they have been tested for racial or other bias. It would also be clear that they were not designed or implemented in a manner that would reduce racial disparities.

The Leadership Conference on Civil and Human Rights also stated that in order to be implemented, pretrial risk assessment instruments must be transparent, validated through independent means and open to challenge by a defendant's legal counsel. In addition, they considered it critical that the public be privy to the design and structure of the tools, reiterating that they be transparent to anyone and everyone.

Based on these rock-solid principles, along with the suggestions offered by professor Wexler, I drafted legislation to address and fix these problems in my state of Idaho. It was also my great hope that in the process, a national conversation on the subject would emerge. To be sure, these issues are not going away by themselves.

The bill I introduced, Idaho House Bill 118, would have required that pretrial risk assessment algorithms prove to be free of bias against protected classes prior to being implemented. It would also have eliminated trade secret protections for proprietors of the algorithms and required that all underlying data and source code be open to academic researchers, as well as the public.

Surprisingly, the biggest pushback against the legislation came when it was revealed that the tools could not be shown to be bias-free. Incredibly, the users of the algorithms basically admitted that they were likely to be biased, and thus, if legislation were to pass, would be eliminated. I did not consider this to be a positive outcome. I have held out a degree of hope that these algorithms, with more research and scholarship, could be built in ways that may not increase or magnify the existing bias in the criminal justice system.

Accordingly, my colleagues in the Idaho House and I settled on eliminating trade secret protection, while forcing transparency behind the construction of the algorithms. Collectively, we considered this a critical step that would help us answer the questions we harbored. Subsequently, during hearings on the legislation in the House Judiciary Committee, Michael Ekstrand, a professor from Boise State University, expressed keen interest in performing scholarly research on the subject — provided he was able to obtain the heretofore secret data. We were intrigued by the notion that we might have a vehicle by which we could at last learn the truth about the degree of systemic bias.

The only opposition to the legislation came from the Idaho Association of Criminal Defense Lawyers. They noted that a deal had already been made with the state Supreme Court and the Idaho Criminal Justice Commission to run a package of legislation in 2020 that would expand the use of pretrial risk assessments statewide. In the process, it would eliminate the constitutional right to bail in Idaho in favor of exclusive use of algorithms. While seemingly disheartening, it immediately became clear that this only added fuel to the fire behind our bill from the majority of my fellow legislators. It was apparent that we would be asked to make an insurmountable leap with evidence next year — one that would only make the problem worse and create widespread electronic discrimination.

Then, something unexpected happened. I believed that proprietors of the algorithms, desiring to protect their trade secrets, would vigorously oppose House Bill 118. Not only did that not happen, but in fact the opposite occurred.

John Arnold, speaking on behalf of Arnold Ventures, agreed with me — that it was time to bring transparency and end protections for intellectual property used in the criminal justice system. Arnold said, “We agree with this proposal from Idaho that risk assessment tools are too important to be black boxes. The methodology must be transparent and open to public inspection, auditing and testing.”

This was an astounding turn of events. What he said next was even more surprising. “One effect of this proposal, for better or for worse, is the private sector will not be able to protect its IP, and thus may not be active in risk assessments. The answer is for philanthropy to create these tools that jurisdictions are asking for while making them fully transparent.” Arnold's position was now in lockstep with the vast majority of legislators in my state. Despite my preconceptions, I commend Arnold for having the courage to stand with us on this issue, perhaps to the detriment of his own business.

On March 4 of this year, House Bill 118 passed the Idaho House of Representatives by a vote of 66-2-2. On March 18, the Senate also passed the bill, with a tally of 33-0-2. Out of 105 legislators in my state, 99 voted in favor of this legislation. Although nothing is ever guaranteed in politics, there is a prevailing belief that Gov. Brad Little will sign the bill into law, making Idaho the first state to eliminate trade secret protections in criminal justice and forcing algorithmic transparency.

House Bill 118 was a great start to an important societal issue. While it has personally been a fascinating subject to tackle, our work has only just begun. As a society, we cannot allow black box technologies to trammel on liberties and impermissibly discriminate against people — certainly not in secret.

I have made it my personal mission to force fundamental change to our current system. In the spirit of true justice, I call on all judges, lawyers and other professionals in the criminal justice system to join with me. It is too important an issue for us to ignore any longer.

[Greg Chaney](#) is a member of the Idaho House of Representatives.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2920883

[2] See **People v. Superior Court** (Chubbs), No. B258569, 2015 WL 139069, at *3, *7, *9-10 (Cal. Ct. App. Jan. 9, 2015).

[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088

[4] <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>



U.S. Supreme Court declines to hear Calhoun bail case

From staff reports April 1, 2019



The U.S. Supreme Court declined to hear a case concerning the City of Calhoun's policy on bail for misdemeanor offenses, upholding the 11th Circuit Court of Appeals ruling that the current policy is constitutional.

The case, *Walker v. Calhoun*, garnered national attention due to its potential to set precedent on Fourteenth Amendment rights of due process and equal protection for indigent defendants.

Calhoun officials hired Brinson, Askew and Berry in 2015 to defend against a class action suit brought by the Southern Center for Human Rights on behalf of Maurice Walker, who spent six days in jail awaiting a hearing because he couldn't afford to post a \$160 bond.

Walker was arrested Sept. 3, 2015, on a charge of pedestrian under the influence. At that time, the city had a fixed bail schedule for traffic and misdemeanor offenses. Those who could pay were immediately released, those who couldn't were held for their court date.

Due to the Labor Day holiday, his case was not due to be heard until Sept. 11, but officials released him Sept. 9 after the suit was filed.

After the lawsuit was filed, the city adopted a Standing Bail Order that set bond amounts according to the offense. It also guaranteed a hearing within 48 hours for indigent defendants asking to be released on their own recognizance.

After approximately three years working its way through the court system, a three-judge panel of the 11th Circuit Court of Appeals ruled 2 to 1 that the first policy is unconstitutional, the second is not.

Landmark Georgia case sets standard for bail

by Marah Brock | Monday, April 1st 2019



Court Ruling Generic (MGN)

CALHOUN, Ga. (WTGS) — The U.S. Supreme Court refused to review a decision in the Eleventh Circuit Court of Appeals case of Maurice Walker v. Calhoun, Georgia on Monday.

With that decision, the lower court's ruling, which affirmed the constitutionality of monetary bail, was allowed to stand.

The U.S. Supreme Court's refusal to hear the landmark case of Walker v. Calhoun, Georgia means the August 2018 decision of the U.S. Court of Appeals for the Eleventh Circuit stands, which ruled that money bail and bail schedules is constitutional.

The suit concerned the use of monetary bail schedules, in which bails are pre-set based on the specific crime that has been charged and which may be adjusted later by judges.

It questioned whether conducting individual reviews of bails set by a schedule within 48 hours meets constitutional muster or instead discriminates against the poor.

Walker spent six days in jail on a pre-set bail of \$160 that he was unable to make before a judge would see him. The Eleventh Circuit Court of Appeals upheld, on a 2-1 decision, the use of monetary bail schedules.

As a result of the suit, the city of Calhoun created a new standing order on bail. It allowed for the use of schedules, but required defendants to be heard by a judge within 48 hours, in which they could request a reduction in bail or be released on their own recognizance.

"The Supreme Court today sent a very strong message that monetary bail and bail schedules are constitutional if the proper due process procedures are followed," said Jeff Clayton, Executive Director of the American Bail Coalition. "It has been a long, hard and expensive road to get here. In denying cert, the Supreme Court has also affirmed that rational basis review is the appropriate standard for reviewing claims of wealth-based discrimination under the equal protection clause. This is contrary to the ruling of two federal district judges who decided to apply intermediate scrutiny and strict scrutiny."

The denial of cert is considered a milestone victory for constitutional law and the commercial bail industry.

"Then-U.S. Attorney General Eric Holder first filed a statement of interest in *Varden v. City of Clanton* in 2015, arguing against the use of bail schedules. Since that time, we have been waiting for a signal from the U.S. Supreme Court as to whether the use of money bail schedules is constitutional. Today, we can say without hesitation, we know their answer," said Clayton.



Supreme Court Turns Away Georgia Cash Bail Challenge

Justices leave intact a ruling allowing detention for 48 hours of those who cannot immediately pay for their release.

Scott Shackford | Apr. 2, 2019

On Monday, the Supreme Court showed its reluctance to wade into bail reform efforts by [turning away a challenge](#) to how Georgia's system's cash demands can leave poor people trapped behind bars even though they haven't yet been convicted.

The court denied to hear [Maurice Walker v. City of Calhoun, Georgia](#), a case challenging how long courts and jails in the state can hold a person after they are arrested if they cannot afford the bail amount that's demanded on a schedule.



Bill H / Dreamstime.com

Walker was arrested in September 2015 in Calhoun for being a pedestrian under the influence of alcohol. He was ordered to pay a bail of \$160 if he wanted to be free. Calhoun was indigent and had a monthly income of \$530 of Social Security disability payments. He ended up spending six days in jail before being released. It could have ended up even longer. Calhoun's court only heard requests for bail reductions or pretrial releases on Mondays and this happened around Labor Day. Mind you, the sentence for the crime here, if he were to be found guilty, [doesn't even call for jail](#), just a fine of up to \$500. So because he couldn't afford his bail, he actually faced more severe punishment than the crime itself warranted.

Walker, represented by the Southern Center for Human Rights, sued, arguing that it was a violation of his constitutional rights to be kept stuck in jail for a week for a misdemeanor offense solely because he didn't have the cash to pay for bail.

Since the suit, Calhoun has changed its policy so that people who cannot afford bail will see a judge within 48 hours in order to make the case that bail should be lowered or that they should be released. But nevertheless the legal challenge [continued](#), asking the federal courts to weigh in on whether even 48 hours was too long to have to wait to see a judge if you can't afford your bail.

The 11th Circuit Court of Appeals in Atlanta upheld the 48-hour policy, and the Supreme Court has declined to consider the timeframe (the Cato Institute filed an amicus brief supporting Walker's side, which you can read [here](#)).

This is the second time in the last six months that the Supreme Court has turned away a case asking justices to determine the parameters of how cash bail may or may not be used. In November, the court [declined to hear](#) a case that was almost the opposite of this Georgia case. In New Jersey, a defendant, represented by a bail bond industry insurance underwriter, sued for the right to pay bail for pretrial freedom. The courts in New Jersey have mostly eliminated cash bail in favor of a system of pretrial monitoring to make sure defendants return to court. The defendant wanted to exercise the right to pay a cash bail and forgo monitoring by the courts. In that case, a federal appeals court ruled that having a right to request pretrial release is not the same as having a right to cash bail. New Jersey was permitted to eliminate money demands as long as it had a robust system to release defendants.

Read more about the Walker case [here](#) and more about bail reform efforts around the country [here](#).

[Scott Shackford](#) is an associate editor at *Reason*.

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After the lawsuit was filed, the city adopted a Standing Bail Order that set bond amounts according to the offense. It also guaranteed a hearing within 48 hours for indigent defendants asking to be released on their own recognizance.

After approximately three years working its way through the court system, a three-judge panel of the 11th Circuit Court of Appeals ruled 2 to 1 that the first policy is unconstitutional, the second is not.



Supreme Court declines to hear Georgia cash bail case

APRIL 2, 2019 02:14:36 PM

Thomas DeLorenzo

The US Supreme Court on Monday **declined** to hear a case from Georgia over whether holding an accused man in prison because he could not afford bail was a violation of his equal protections rights.

Maurice Walker was arrested in Calhoun, Georgia, and accused of being a pedestrian under the influence of alcohol in September of 2015. At the time, Calhoun required a statutorily predetermined \$160 cash bail payment for the charge, which Walker could not afford to pay. As a result, Walker was held in jail for six days before his lawyer posted bail on his behalf. He sued the city alleging that they had violated his Fourteenth Amendment right to equal protection by treating the poor differently than those wealthy enough to post bail. Soon after his suit was filed, the city updated its bail policies to require a hearing within 48 hours to determine if the bail was excessive due to the accused person's financial situation, but still permitted those who could afford to post bail immediate release. Walker maintained that this disparate treatment was unconstitutional.

The US Court of Appeals for the Eleventh Circuit **decided against** Walker, stating that although his detainment may have been longer than the period permitted in the revised

bail rules, the city's updated policy was "consistent with the Supreme Court's past decisions" that have held that 48 hours is an acceptable time for accused persons to be held. In addition, the court's opinion stated that every government policy has a disproportionate impact on people of different financial levels, such as a richer person being able to afford to go to a more expensive university than a poor one, and to rule in Walker's favor would result in a slew of lawsuits against nearly every government policy.

The Supreme Court's refusal to hear Walker's case does nothing to resolve the split in opinions over the constitutional limits of cash bail systems based on the wealth of the accused person. In March a federal judge in California ruled the state's cash bail system violates the rights of the poor, while on Monday the state of New York passed an omnibus budget bill that includes eliminating cash bail for most nonviolent misdemeanors and felonies.

News

SCOTUS Cert Denial Lets Cash Bail Stand

“The bail industry hasn’t any cause to celebrate. It’s an outmoded and destructive industry that’s on its way to extinction, and cases like Walker are just the first step,” Southern Center for Human Rights attorney Sarah Geraghty said Tuesday.

By **Katheryn Tucker** | April 02, 2019 at 02:57 PM



(Photo: Shutterstock.com)

Surety bond insurance companies are applauding a decision by the U.S. Supreme Court Monday not to review the constitutionality of cash bail in a closely watched case from the North Georgia city of Calhoun, while civil rights lawyers say the closely watched litigation has still helped move the country away from an unfair system.

The high court denied certiorari in *Walker v. Calhoun*, effectively letting stand a decision from the U.S. Court of Appeals for the Eleventh Circuit in Atlanta affirming the constitutionality of Calhoun’s monetary bail schedule. The circuit’s split decision vacated a preliminary injunction granted by Senior Judge Harold Murphy of the U.S. District Court for the Northern District of Georgia, who has twice ruled that Calhoun’s misdemeanor bail policy is

unconstitutional for allowing those with cash to bail out of jail while holding those who can't afford release.

The Supreme Court's certiorari denial drew immediate cheers from the American Bail Coalition, a group that says it is "comprised of the nation's largest surety insurance companies" and "dedicated to protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States."

"The Supreme Court today sent a very strong message that monetary bail and bail schedules are constitutional if the proper due process procedures are followed," American Bail Coalition Executive Director Jeff Clayton said in the news release. "It has been a long, hard and expensive road to get here."

The group said that, in denying cert, the Supreme Court has affirmed that "rational basis review is the appropriate standard for reviewing claims of wealth-based discrimination under the equal protection clause," contrary to two federal district judge rulings.

"Then-U.S. Attorney General Eric Holder first filed a statement of interest in *Varden v. City of Clanton* in 2015, arguing against the use of bail schedules," Clayton said. "Since that time, we have been waiting for a signal from the U.S. Supreme Court as to whether the use of money bail schedules is constitutional. Today, we can say without hesitation, we know their answer."

The Southern Center for Human Rights in Atlanta argued against cash bail on Maurice Walker's behalf.

"The bail industry hasn't any cause to celebrate. It's an outmoded and destructive industry that's on its way to extinction, and cases like *Walker* are just the first step," Southern Center lawyer Sarah Geraghty said Tuesday. "While we hoped for a different result in the Supreme Court, the *Walker* case has nevertheless pushed the cash bail debate forward and encouraged many jurisdictions—including Atlanta—to reconsider their reliance on wealth-based detention."

During the course of the litigation, the city of Calhoun changed its system from one that allowed people without funds to be held up to 11 days before seeing a judge to a limit of 48 hours. Walker had been jailed for six days because he couldn't pay a preset bail of \$160 after being charged as a pedestrian under the influence of alcohol.

“Under the Eleventh Circuit’s decision in *Walker* (2018), cities that jail people for longer than 48 hours before conducting an inquiry into the ability to pay cash bail are now vulnerable to legal challenge and should change their policies,” Geraghty said. “A better, more morally defensible response would be to follow the lead of cities like Atlanta, Chicago, New Orleans, and Nashville in reducing or eliminating wealth-based detention all together.”

When the case returns to the trial court, the *Walker* legal team will seek to enforce at least the 48-hour limit on how long people can be jailed before seeing a judge. “Mr. Walker will ask the federal court to enjoin the city from going back to its prelitigation policy of jailing indigent people for a week or more before they get a bail hearing in a misdemeanor case,” Geraghty said.

The team representing the city of Calhoun includes J. Anderson Davis, Frank Beacham and Sam Lucas of Brinson, Askew, Berry, Seigler, Richardson & Davis in Rome, as well as David Root and Abby Grozine from Carlock, Copeland & Stair in Atlanta, working with city attorney George Govignon. Lucas argued the case at the Eleventh Circuit, twice.

“We are pleased that the Supreme Court declined to hear this case at this juncture,” Davis said Tuesday. “As we argued to the Court, the Eleventh Circuit correctly held that the City of Calhoun’s Municipal Court’s November 23, 2015, Standing Bail Order is constitutional. And now, over three years later and after two trips to the Eleventh Circuit, the Municipal Court can operate under the Standing Bail Order with the approval of the Eleventh Circuit.”

Katheryn Tucker



Katheryn Hayes Tucker is an Atlanta-based reporter covering legal news for the Daily Report and other ALM publications.

CALIFORNIA ★ POLITICAL
REVIEW

Supreme Court Allows Cash Bail!! Victory to Keep Criminals in Jail.

April 1, 2019 By Stephen Frank [Leave a Comment](#)

The Supreme court has upheld rational, common sense and Constitutional law—instead of emotion pro-criminal legislation and lawsuits meant to put as many criminals back on the streets to either commit more crimes, or like illegal aliens, disappear and turn up elsewhere—committing crimes.

“The Supreme Court today sent a very strong message that monetary bail and bail schedules are constitutional if the proper due process procedures are followed,” said Jeff Clayton, Executive Director of the American Bail Coalition. “It has been a long, hard and expensive road to get here. In denying *cert*, the Supreme Court has also affirmed that rational basis review is the appropriate standard for reviewing claims of wealth-based discrimination under the equal protection clause. This is contrary to the ruling of two federal district judges who decided to apply intermediate scrutiny and strict scrutiny.”

The November, 2020 California ballot will have a referendum, to repeal the Democrat legislature, looking for ways to put criminals on the streets. Expect supporters of crime, lots of rich white people, with guns and armed guards, to tell about the plight of the criminal—forgetting the victims.



U.S. SUPREME COURT DENIES CERTIORARI IN CASE THAT UPHELD USE OF MONEY BAIL AND BAIL SCHEDULES

American Bail Coalition, 4/1/19

Lakewood, CO (April 1, 2019) – The U.S. Supreme Court today refused to review a decision in the Eleventh Circuit Court of Appeals case of *Maurice Walker v. Calhoun, Georgia*. In denying *certiorari*, the lower court’s ruling, which affirmed the constitutionality of monetary bail, was allowed to stand.

The suit concerned the use of monetary bail schedules, in which bails are pre-set based on the specific crime that has been charged and which may be adjusted later by judges. It questioned whether conducting individual reviews of bails set by a schedule within 48 hours meets constitutional muster or instead impermissibly discriminates against the poor.

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Clayton added, “Then-U.S. Attorney General Eric Holder first filed a statement of interest in *Varden v. City of Clanton* in 2015, arguing against the use of bail schedules. Since that time, we have been waiting for a signal from the U.S. Supreme Court as to whether the use of money bail schedules is constitutional. Today, we can say without hesitation, we know their answer.”

About the American Bail Coalition

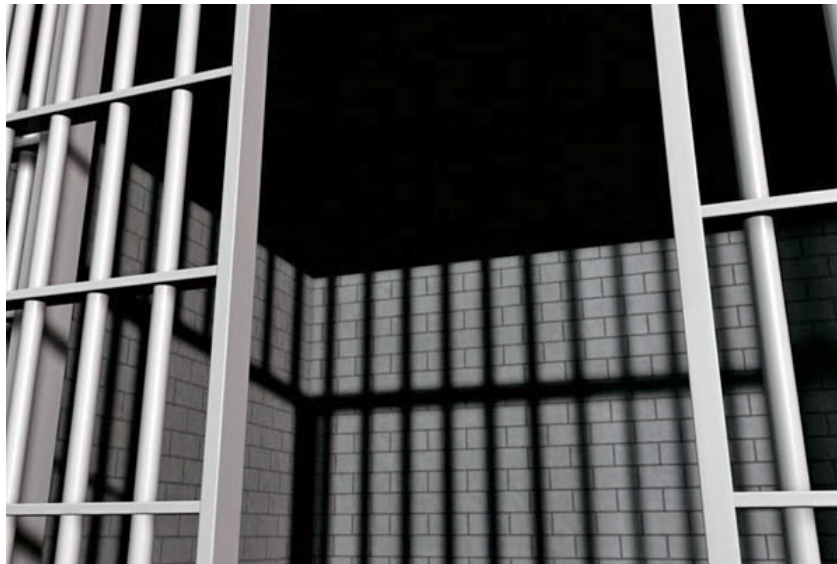
The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States. Comprised of the nation’s largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilize its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions. www.ambailcoalition.org



AMID LINGERING CONCERNS, STATE REPORT ON BAIL REFORM NOTES SUCCESSES

COLLEEN O'DEA | APRIL 3, 2019

A report by the state judiciary shows that fears of 'chaos' and 'mayhem' have failed to come to fruition



New Jersey's criminal-justice reform that all but eliminated money bail gets relatively high marks in a new state report on its first two years, with little change in the proportion of those released pending trial either re-offending or not showing up for trial.

Still, there are some concerns and outstanding questions in the judiciary's **2018 report** to Gov. Phil Murphy and the Legislature. The number of defendants being held pending trial rose by 7.8 percent from 2017, the first full year of the reform, to 2018. Black males continue to make up the majority of the overall jail population and the question of whether black defendants are detained pending trial at a higher rate than whites remains unanswered.

And the courts expect to not have enough money to fully pay for the system as soon as next year.

“New Jersey’s criminal justice system has begun to remove inequities created by the heavy reliance on monetary bail,” said state Supreme Court Chief Justice Stuart Rabner in a statement Tuesday. “Criminal Justice Reform has reduced the unnecessary detention of low-risk defendants, ensured community safety, upheld constitutional principles, and preserved the integrity of the criminal justice system.”

The report found a slight increase in the percent of defendants released pending trial charged with an indictable crime in 2017, compared to 2014, when money bail was the primary mechanism for release from jail before a trial — 13.7 percent in 2017 versus 12.7 percent in 2014. There was also a rise in the percent of those charged with a disorderly persons offense after release — 13.2 percent in 2017 versus 11.5 percent three years earlier.

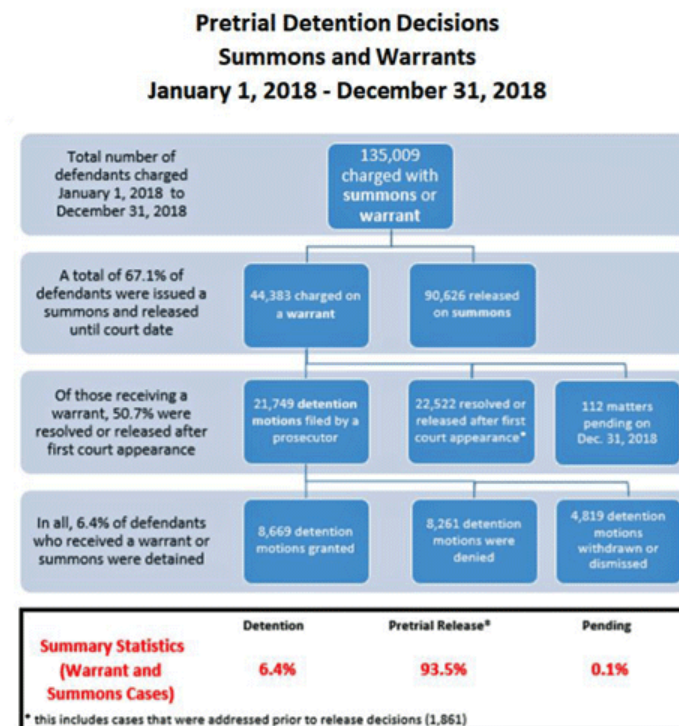
In addition, the percentage of defendants released pending trial who showed up for pretrial court appearances declined last year to 89.4 percent, from 92.7 percent in 2014. Advocates hail decline in overall jail population

Advocates hail decline in overall jail population

Sen. Declan O’Scanlon (R-Monmouth), who was among the sponsors of the reform legislation, said those patterns are not necessarily troubling and could indicate a natural fluctuation in offender actions, but they are something the state needs to keep monitoring.

“If re-offenses and failure to show had gone down, that would be a pretty definitive indication of success,” he said. “The fact they went up marginally is something we have to continue to pay attention to ... The bail industry had predicted chaos and mayhem and that is not the case.”

Meanwhile, reform advocates point to the successes of the program. For instance, the overall jail population has declined by 6,000 from October 2012 to October 2018. The number of days a defendant was held before initial pretrial release dropped by half from 7.4 in 2014 to 3.7 in 2017 and the time all defendants were held in jail prior to trial declined by 40 percent, from 62.4 days to 37.2 days.



“This report shows that New Jersey’s historic bail reform law has been a resounding success,” said Roseanne Scotti, New Jersey State Director of the Drug Policy Alliance. “We have seen a 44 percent decrease in the pretrial jail population and, at the same time, no meaningful increases in failures to appear in court or new offenses committed by people who are released pretrial ... The end of money bail in New Jersey has increased both social justice and public safety in our state.”

Until January 1, 2017, when someone was arraigned on a significant crime in New Jersey, a judge determined whether to release the accused or set a bail amount. In 2014, voters overwhelmingly passed a constitutional amendment to end [the guarantee of money bail](#) and change how the courts decide where the accused awaits trial. Now, money bail typically is imposed only when a defendant fails to appear in court or otherwise violates the conditions of his pretrial release.

Before reform, many were unable to post bail

The Drug Policy Alliance was key to reforming the bail system, releasing a report in 2013 that found almost 40 percent of the state’s jail population in October 2012 was incarcerated because of an inability to post bail, with 12 percent of those in jail unable to pay a bail of \$2,500 or less. Last October, just 4.6 percent of defendants, 390, were in jail on a bail of \$2,500 or less and most of those — 61 percent — were in jail on municipal-court warrants and were therefore ineligible for release under criminal justice reform.

With the new reform process, information about a defendant is put through an algorithm that calculates what danger the defendant might pose to others and the likelihood of their appearing for trial. Based on the score returned by the assessment, several options are possible: a person may be released with no conditions; they may be required to check in by phone or in person with a pretrial services officer; they can be required to wear an ankle bracelet and be limited as to when they can leave home, or they can be held in jail until trial.

Another aspect of the reform is the greater use of complaint summonses, rather than arrest warrants, for low-risk defendants. A person issued a summons to appear in court by law enforcement is not processed through a jail, while those arrested are placed in jail until a judge determines whether to release or detain them pending trial. In 2014, 54 percent of defendants received a summons. In 2017, the first full year of reform, that had increased to 71 percent of defendants not having to be processed through jail.

“Two years of comprehensive data leaves little debate that criminal justice reform is greatly improving the lives and rights of New Jerseyans,” said Alexander Shalom, the ACLU-NJ’s senior supervising attorney. “What’s more, thousands of low-risk defendants are now being diverted from the jail intake process altogether, instead receiving summonses that minimally disrupt their lives while the accusations against them are adjudicated. That’s a clear victory for civil rights, and a benefit of reform that hasn’t been talked about enough.”

Jeff Clayton, executive director of the American Bail Coalition, said the increased use of summonses is the real reason for a drop in the number of people in jail and the state could have instituted that change without upending the system.

“That’s 29,000 fewer people they are arresting, that’s what’s driving the reduction in the jail population,” said Clayton, whose organization opposed the ending of bail as a requirement for release from jail. “They’re just not arresting as many people ... I would not consider that great a victory.”

Reform as a social justice issue

Regardless of how it was achieved, advocates who had pushed for the reform as a social-justice issue cheered the reduction in the jail population, particularly as it has meant that

3,000 fewer blacks and 1,300 fewer Hispanics, as well as 1,500 whites, were held last October than six years earlier.

“Thousands of individuals, mostly people of color, have been able to remain free pending trial,” Scotti said. “They have been able to stay with their families and communities. They have been able to keep their jobs and their housing.”

On the other hand, a section of the report that looked at the overall jail population and not just those awaiting trial shows that the racial and ethnic makeup of the overall jail population remained disproportionately black, with no change from 2012 to 2018: 54 percent of all those in prison were African-Americans. Blacks make up about 15 percent of the state population.

The court’s report notes this, stating, “the Judiciary recognizes the need to continue to examine the effect of CJR on racial disparity in the criminal justice system and to ensure that all defendants are treated equally by the courts.”

“It is certainly problematic,” Shalom said. “It is not good enough that things have not gotten worse. There exist many drivers of disparities; our system of pretrial justice should look to address and eliminate them wherever it can.”

One question not answered by the report is whether blacks and Hispanics accused of a crime are detained pending trial at a greater rate than whites. That could contribute to the continuing large proportion of people of color in jail and it is something about which advocates have been concerned.

Shalom praised the state for including data about race and ethnicity in its report, but added, “More data would be useful on this point.”

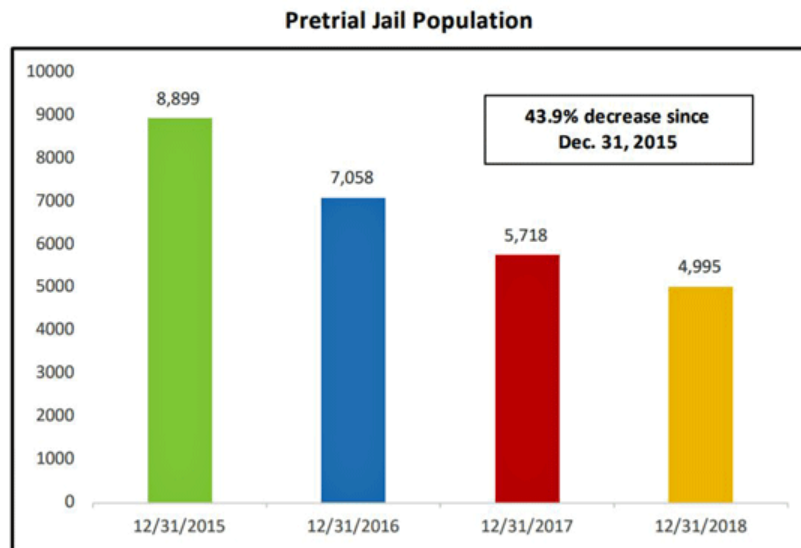
Another report finding of potential concern is the increase from 2017 to 2018 in the percentage of arrested defendants who are detained in jail while awaiting court proceedings. Jails held more than 600 additional defendants last year than in the first year of bail reform. (There is essentially no more cash bail so these are people denied release because the algorithm determined they were either a risk to public safety or a flight risk.) The detention rate for those charged on a warrant rose from 18.1 percent in 2017 to 19.5 percent last year. It’s unclear whether that may have been because of changes in guidance from the courts or the attorney general about when to seek or approve detention or for other reasons. Prosecutors also filed more requests to detain defendants — from 43.7 percent of cases in 2017 to 49 percent last year.

“Any increase in detention rates raises red flags,” Shalom said. “Our system succeeds when it prioritizes liberty; we’ve made tremendous strides in changing the culture of pretrial justice to one that has release as a default, but there is more work to be done.”

Money, other concerns for the future

The report raises other concerns, as well, stating that there are “insufficient resources” to provide needed treatment for substance abuse and mental health issues for those released pending trial. There is also a lack of housing assistance.

For the second year in a row, the report also states that there is “an impending funding crisis” for the program that monitors those defendants who are released until the final disposition of their cases. The intensity of the monitoring depends on the level the court orders, ranging from a monthly phone call to responding to alerts that a defendant on electronic monitoring has left home or tampered with an electronic bracelet.



The pretrial services program added 30 employees last year and has a total staff of 297, in addition to the judges who hear cases. It costs \$4.19 per defendant per day for electronic monitoring.

“There is a continuing critical need to identify and implement a sustainable means to fund the program,” the report states. “The current method — which relies on annual court filing fees — is not a workable approach. As predicted at the outset of CJR, the model in place has a built-in structural deficit, and within the next year, will result in an actual funding deficit.”

The amount collected in court filing fees has been dropping since the 2016 fiscal year. In the last fiscal year, the judiciary collected \$40.5 million and collections for FY2019 are so far 1 percent below where they were at the same time last year.

Shalom said the state needs to come up with a stable source of adequate funding to keep the program going.

“The time has come to fund the program from the state budget rather than from filing fees,” he said. “The opportunity for long-term financial savings due to a sharply diminished New Jersey jail population is real; regardless, the gains — a fairer system, families that aren’t disrupted, and stronger communities — are worth every penny of our investment in this system.”

County jails need more time to measure impact

John Donnadio, executive director of the New Jersey Association of Counties, said the counties need more time to determine how much they might be able to save in jail costs.

“With respect to operating county jails, we will need another year or so to determine if the reduction in the overall jail population will result in any cost savings,” he said, adding that the jails are continuing to process defendants. “Over time, county jails should realize cost savings through attrition and the retirement of correction officers, but it’s still too early to make that determination.”

However, he added, county governments spent between \$45 million and \$50 million hiring additional prosecutors to implement another component of the reform — setting time limits for court proceedings to ensure that a defendant who is kept in custody does not have to wait overly long for his case to be decided. For instance, a person cannot be held more than 90 days before an indictment, or more than 180 days after an indictment, with some exceptions.

While the report does not go into detail about the state's performance on keeping to those deadlines, courts spokesman Peter McAleer said that trials have been proceeding according to those timeframes.

"We only know of a very small number of instances, like one or two, where we missed the deadline," he said.



Governor Newsom Press Office
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Following



@JerryBrownGov Signs Legislation to Revamp California's Bail System, Protect Public Safety: bit.ly/2N2YWvI #SB10



12:29 PM - 28 Aug 2018

U.S. Supreme Court Affirms Constitutionality of Bail, But CA Still In Legal Bail Limbo

Opponents say 'cash bail' system creates a system of 'wealth-based discrimination'

By [Katy Grimes](#), April 3, 2019 3:15 pm

For four years activist Plaintiffs lawyers have been suing smaller cities arguing that the existing bail system is unconstitutional because it violates the principle of equal protection under the law.



In San Francisco, such a lawsuit claims, ““Wealthy arrestees purchase their freedom by paying an arbitrary amount set by the bail schedule. Poor arrestees must languish behind bars until the resolution of their case, simply because they cannot afford to pay a pre-determined sum of money.”

Yet Article 1, Section 12 of the California Constitution expressly addresses bail under its Declaration of Rights.

U.S. District Judge Yvonne Gonzalez Rogers wrote, “Given the consequences which flow from an extended duration of pre-arraignment detention, the court finds the deprivation significant. Accordingly, plaintiffs have shown that the sheriff, through use of the bail schedule, has significantly deprived plaintiffs of their fundamental right to liberty by sole reason of their indigence,” Courthouse News reported. Judge Gonzalez Rogers said the bail schedule is arbitrary, and “merely provides a ‘Get Out of Jail’ card for anyone with sufficient means to afford it.”

While California appears mired in class warfare issues, the City of Calhoun, Georgia took their case all the way to the U.S. Supreme Court in [Maurice Walker v. Calhoun, Georgia](#). California Globe wanted to know if the Calhoun case would set any precedence on California's pending bail case.

The U.S. Court of Appeals for the [Eleventh Circuit ruled last year](#) that the Calhoun's revised bail order, using bail schedules with an expeditious review by judges, was constitutional. The Civil Rights Corps then filed a petition for *certiorari* (a writ or order by which a higher court reviews a decision of a lower court.) before the U.S. Supreme Court, asserting that the Eleventh Circuit erred by applying the rational basis standard to the review of claims of discrimination based upon wealth.

However, the Supreme Court upheld the decision of the Eleventh Circuit U.S. Court of Appeals when it denied the *certiorari* Petition.

"This means that monetary bail and the use of monetary bail schedules meets constitutional muster," said Jeff Clayton, [American Bail Coalition](#) Executive Director. "That is not to say that all uses of a schedule are constitutional—adequate due process review of the bails must occur within a matter of two to three days."

"We knew from the beginning these cases were about due process more than excessive bail, and we were proven correct today," Clayton said Wednesday in an interview.

California Globe asked Clayton if this 11th Circuit decision impacts the federal Judge Yvonne Gonzalez Rogers's recent ruling that San Francisco's bond schedule is unconstitutional. "The judge in the San Francisco bail case took a long time in her decision setting her case far apart from Calhoun's," Clayton said. He added that he anticipates the San Francisco case will go to the Ninth Circuit Court of Appeals, and it is "likely that the United States Supreme Court will hear this one."

California's Bail Cases

The California Legislature weighed in on this issue last year with [Senate Bill 10](#), arguing that the current bail system was unfair to low income people. In place of bail schedules, SB 10 would have created "a pretrial services agency to immediately upon booking conduct a pretrial risk assessment on the arrested person and prepare a pretrial services report with recommendations for conditions of release, and provides that a person who is arrested and booked for a misdemeanor, who is not first cited and released with a signed promise to appear in court, shall be released by the pretrial services agency subject to signing a release agreement without further conditions."



Sen. Bob Hertzberg

Former Gov. Jerry Brown signed [Senate Bill 10](#) into law in August 2018, which would have completely abolished California's cash bail system, and more than 3,000 bail bondsmen and women, by Oct. 1, 2018. However, [Californians Against the Reckless Bail Scheme](#) fought the legislation on two points: it would result in the release of violent offenders to the streets and would kill a \$2-billion national industry, as well as the 3,200 bail agents in California. The group collected more than 575,000 signatures in 70 days to put SB 10 on the November 2020 ballot, to allow California voters to decide.

The real purpose of SB 10, by Sen. Bob Hertzberg (D-Los Angeles) and Assemblyman Rob Bonta (D-Oakland), appears to be less about the constitutionality of bail and more a part of the movement to "reform" California's criminal justice system and let more "low-level" criminals back out on the streets.

Hertzberg [suggested](#) the risk assessment-based bail reform would help decrease the number of innocent people in jail.

SB 10 would eliminate bail, which bail bondsmen and attorneys say is a vital tool that ensures people arrested for crimes will return to court for their trials. SB 10 will “increase crime and cost the public untold hundreds of millions of dollars,” Jeff Adachi, San Francisco Public Defender said in support of the ballot initiative, before he recently and suddenly passed away.

[Senate Bill 10](#) bill analysis stated that “the purpose of the bill is to reduce the amount of people held in pretrial detention because of the inability to afford money bail and to require each county to establish a pretrial services agency that meets certain specifications.

SB 10 “provides for immediate release of most misdemeanants and those assessed as low risk to public safety and for failure to return to court, and supports informed judicial determination of release for those assessed as moderate or high risk, with limitations on the use of preventive detention,” the [Judicial Council of California](#) wrote in a letter of support. “It is an appropriate and effective alternative to the current pretrial release and detention system that results in pretrial outcomes that are often unsafe and unfair.”

Clayton added, “Then-U.S. Attorney General Eric Holder first filed a statement of interest in *Varden v. City of Clanton* in 2015, arguing against the use of bail schedules. Since that time, we have been waiting for a signal from the U.S. Supreme Court as to whether the use of money bail schedules is constitutional. Today, we can say without hesitation, we know their answer.”

The country knows the answer, but does California?



Katy Grimes

Katy Grimes, the Editor of the California Globe, is a long-time Investigative Journalist covering the California State Capitol, and the co-author of [California's War Against Donald Trump: Who Wins? Who Loses?](#)

California voters will get say on bail system, judges urge reform

[Sheyanne N Romero](#), Visalia Times-Delta Published 8:04 a.m. PT April 3, 2019



While Senate Bill 10 is on hold, California's chief justice plans to review progress made on reforms to the state's pretrial detention system. (Photo: Sheyanne Romero)

California's no cash bail law is on hold until the November 2020 election.

But, leaders in criminal justice plan to move forward with reforms to the state's pretrial detention system.

Chief Justice Tani Cantil-Sakauye recently met with 12 members of the criminal justice system from across the state to review pretrial detention progress and identify possible improvements.

The group included trial court judges, appellate justices and court executive officers from courts of all sizes and from both rural and urban areas.

The review began in February.

"In California, we are leading and experiencing reforms driven by best practices, but also pilot projects, court decisions, and legislation," Cantil-Sakauye said. "This workgroup will help continue progress toward reform that benefits the branch, enhances public safety and promotes equitable treatment of all who come through our criminal justice system."

Across California, pretrial release and detention primarily based on cash bail are slowly being replaced. Senate Bill 10 was passed by former Gov. Jerry Brown and meant to put an end to cash bail.

However, the bill was met with strong opposition — bail agents and prosecutors.

Tulare County wasn't apart of February discussions but court officials intend to continue using its pretrial risk assessment tool.

The [Arnold Foundation's pretrial risk assessment tool](#) was implemented in June and is administered by court and probation. Court and probation employees were trained for months before using the tool.

"Pretrial justice itself has been a long overlooked area in which resources and creative thought should be given," said Tulare County Presiding Judge Brett Alldredge. "We have dozens of cases on the calendar with defense and prosecution trying to negotiate deals."

The court is given recommendations on what they should do with a defendant based on a number of factors including public safety and flight risk — failure to appear.

Alldredge said having a probation office on hand as a resource has been a "boon" in the courtroom.

"It's made us much more effective," he said. "The court's relationship with the probation department has been outstanding."

Along with recommendations from the probation department, judges use nine factors to determine a defendant's release including the risk of failure to appear, behavior, and violence. The defendant's age, charge and any prior law enforcement encounters are also taken into consideration.

"I truly believe that justice is best delivered if it's done in a considered fashion on an individualized basis with a judge that is as fully informed as possible," Alldredge said.

Other California jurisdictions have implemented bail reform using a similar risk assessment tool that classifies a defendant into one of three categories.

Low risk means release from jail for free; medium risk means there is increased supervision and monitoring; and high risk means preventative detention — no release at all.

However, these risk assessment tools aren't always reliable.

Some violent offenders have been declared as safe, while others with seemingly minor blemishes on their records have been categorized as dangerous.

This means there are violent offenders being released for free, while others with minor blemishes on their records have been deemed "high risk" and are stuck in jail.

Despite debates, many feel that pretrial detention will never be what it once was. Courts will have a better idea of how they should move on.

"If we are to continue to adopt programs consistent with the spirit of SB 10, I know that we've already done that here," Alldredge said. "We are ahead of the curve, by quite a ways."

A previous workgroup established by the chief justice to study pretrial detention released a slate of recommendations in 2017.

Those recommendations included replacing money bail with a risk-based assessment and supervision program that base decisions on whether to jail offenders before trial based on their threat to public safety and their likelihood of making a court appearance.

Brown signed SB 10 into law in August. His decision relied heavily on the workgroup's recommendations.

However, some weren't in favor of the bill.

"I didn't support SB 10 when it came through the Assembly. I didn't think it was fully cooked. The bill was very rushed," said Assemblyman Devon Mathis. "I'm glad it made it back to the ballot. It's allowing the voters to decide."

The new law — which would have taken effect on Oct. 1 — was immediately met with resistance from both civil rights groups, politicians and the bail bond industry.

"This measure has a lot of repercussions and we should respect the will of the people," Mathis said.
"As of late, it feels like California has forgotten about its duty to its citizens."

Bail industry leaders collected the more than 500,000 signatures needed to place SB 10 on the November 2020 ballot. The signatures were certified by the Secretary of State, which places the bill on hold.

"We knew with the momentum against this law from people on all sides of the issue, getting on the ballot would not be the problem," said Jeff Clayton, executive director of the American Bail Coalition.
"Now we can move on toward defeating this reckless law."

NYC Firm Touts Bail Reform as Supreme Court Sets Standards for Release



(Photo: iStockphoto / NNPA)

By Stacy M. Brown, NNPA Newswire Correspondent
@StacyBrownMedia

While a landmark Georgia case has now set the standard for bail, one New York-based law firm is applauding the Empire State's readiness to address the injustice of cash bails.

The Manhattan firm of Watford Jackson, PLLC, said innocent until proven guilty can feel like a sham when thousands of accused but non-convicted defendants languish in New York jails for lack of a few hundred dollars to make bail.

Shockingly, lawyers at the firm noted that 72 percent of people arrested in New York City end up at the notorious Rikers Island jail for at least a day because they cannot raise the necessary cash bail fast enough, even for a misdemeanor crime such as drug possession or assault.

However, the state of New York does appear to be ready to address this injustice in 2019.

A task force created by the New York State Unified Court System spent over a year discussing the issue and published its final report in February 2019.

The report largely agrees with the latest drafts of bail reform legislation coming out of Albany.

The likely changes include:

- More offenses should be designated for police issuance of an appearance ticket rather than an arrest.
- People accused of misdemeanor and some non-violent felony crimes should be released without cash bail, either on their own recognizance or with the least restrictive non-monetary conditions necessary to ensure their appearance in court.
- However, courts should be able to deny release if the defendant currently poses a credible threat to the physical safety of an identifiable person or group.
- State law should specify a limited list of crimes for which a defendant may be held in pre-trial custody, if the prosecutor makes a case for it.

- Judges' use of electronic monitoring in place of jail detention should be subject to specific guidelines set out in state law.

New York City has already taken action over the past four years to reduce its jail population rather than wait for state-level reform.

The city now offers a program known as "supervised release," a partnership with nonprofit groups that will help evaluate defendants and allow social workers to maintain contact with assigned defendants, the attorneys at Watford Jackson noted.

Of the first 10,000 people who qualified for supervised release, 87 percent attended all of their court dates.

Other bail reforms instituted by NYC include the elimination of jail sentences of less than 30 days; expansion of the bail expeditors program; and creation of an online website that family members can use to pay bail as soon as a defendant has been arraigned.

Watford Jackson's report comes as the U.S. Supreme Court on Monday, April 1, refused to review a decision in the Eleventh Circuit Court of Appeals case of *Maurice Walker v. Calhoun, Georgia*.

The high court's refusal to hear the landmark case of *Walker v. Calhoun, Georgia*, means the August 2018 decision of the U.S. Court of Appeals for the Eleventh Circuit stands, which ruled that money bail and bail schedules is constitutional.

The Petitioner, Maurice Walker spent six days in jail on a pre-set bail of \$160 that he was unable to make before a judge would see him. According to the [SCOTUSblog](#), petition's central issues were whether heightened scrutiny under the 14th Amendment applies to a government policy that keeps misdemeanor and traffic-offense arrestees in jail pretrial solely because they are poor; and (2) whether the government can keep misdemeanor and traffic-offense arrestees in jail for up to 48 hours after arrest solely because they are poor when it has offered no reason for doing so.

The petition concerned the use of what are commonly referred to as "monetary bail schedules," where bail amounts are pre-determined, based upon specific offences. The practice allows later adjustment once a defendant appears before a judge.

In Walker's case, he was jailed because he could not afford to pay \$168 in traffic fines and had no means of communicating with a family member to obtain the funds. Leading the position that he, and others in their situation, are jailed simply because they are poor.

The petition questioned whether conducting arbitrary individual reviews of bails set by a schedule within 48 hours meets constitutional muster or instead discriminates against the poor, according to the American Bail Coalition.

The Eleventh Circuit Court of Appeals upheld, on a 2-1 decision, the use of monetary bail schedules. As a result of the suit, the city of Calhoun created a new standing order on bail.

It allowed for the use of schedules but required defendants to be heard by a judge within 48 hours, in which they could request a reduction in bail or be released on their own recognizance.

"The Supreme Court today sent a very strong message that monetary bail and bail schedules are constitutional if the proper due process procedures are followed," Jeff Clayton, Executive Director of the American Bail Coalition, said in a statement.

"It has a been a long, hard and expensive road to get here," Clayton said.

In denying to hear the Petition (denial of cert), the Supreme Court has also affirmed that rational basis review is the appropriate standard for reviewing claims of wealth-based discrimination under the equal protection clause. "This is contrary to the ruling of two federal district judges who decided to apply intermediate scrutiny and strict scrutiny," Clayton said.

The denial of cert is considered a milestone victory for constitutional law and the commercial bail industry. "Then-U.S. Attorney General Eric Holder first filed a statement of interest in *Varden v. City of Clanton* in 2015, arguing against the use of bail schedules," Clayton added.

"Since that time, we have been waiting for a signal from the U.S. Supreme Court as to whether the use of money bail schedules is constitutional. Today, we can say without hesitation, we know their answer," he said.

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New York State's Roadmap to Bail Reform:
Keep the Poor and Innocent Out of Jails

Advisor Peter Kann

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Part 1: The Story of a Young Black Man



(Marvin Mayfield shared his experience of being detained on Rikers Island pretrial at a bail reform meeting in Brooklyn on February 27th, 2019.)

A bald black man dressed in a professional black suit quickly walked towards the podium. He looked confident, professional and well-educated. Not many people in the audience had any idea of what he had gone through and the brutal realities he had witnessed.

“Let me share a story with you,” said Marvin Mayfield with a slightly raucous voice. “A young man was walking down the street. He was stopped by the police, beat up by the police. He’s a suspect in a burglary.”

The audience sitting in the auditorium of Congregation Beth Elohim, a Jewish congregation located in Brooklyn, New York, listened tentatively to Mayfield’s speech. It was a Wednesday

night, but the synagogue was packed with more than 100 people attending the meeting. They were invited to listen to the experiences of people whose lives were directly impacted by bail and learn about the proposed bail reform legislations in New York State.

The speaker, Marvin Mayfield, was 22 years old when he was charged for burglary, a crime he claimed that he never committed. Just coming home from the military as a member of the air force, he was unemployed and partying with his friends all the time. In 1988, one night while he was walking on the street after hanging out late with his friends, the police arrested him for the suspicion of burglary. At the time of his arrest, Mayfield was on probation for other misdemeanor charges including breaking and entering, disorderly conduct as well as possession of controlled substance. Therefore, he was not considered as a first-time offender.

After slightly clearing his throat, Mayfield continued with an increasingly fast-paced voice. “He’s tossed in a cell...Once he’s there, he’s placed in the first series of cages. For the next 48 hours, this young man was shuffled from cells to cells, cages to cages before ever being brought before a judge. When he was finally arraigned, the judge imposed a \$10,000 bail.”

Mayfield couldn’t afford it, nor did his family or friends have the money, so he was stuck there with no way to get out. He was sent to C95 jail on the overflowing Rikers Island, NYC’s main jail complex, and over there, he experienced some of the most vicious violence and dangerous conditions he had ever seen in his life, after coming back from the military. “Rikers Island was like being in a war zone,” Mayfield recalled.

“It was only half an hour on Rikers Island before he experienced his first assault,” said Mayfield while his voice shook. “Nobody came to rescue... before he even saw his assigned jail cell, he heard the sound of chaos and the calls of ‘Fresh meat! Fresh meat!’... This scenario repeated itself over and over again during the four-month stay when the young man was there. He had to suffer and endured these and other indignities simply because he didn't have the money to pay his way out of this misery.”

Mayfield paused and looked around into the eyes of the silent audience, he continued with a sad voice, “this young man was me”.

During his four-month stay on the infamous Rikers Island, Mayfield said he was a prey of the predators. He was assaulted over and over again, robbed of every valuable he had and beaten up by the correction officers. After refusing to be strip searched by the officers as he felt demeaned and embarrassed, Mayfield was taken into a private area and beaten down again. “The only thing I can equate it with was slavery,” said Mayfield. “I languished and languished until the point where I felt that I just couldn't take it anymore.”

For his case, Mayfield had been brought to court for 8 to 10 times during the four-month stay, but only got to see the judge for three times. Most of the times the case was adjourned or postponed.

After listening to the advice of other prisoners, Mayfield took the plea deal for one to three years in state prison, ended up serving six months in upstate prison and eventually got sent home for a

work release program. “At upstate, it was almost like a vacation getting out of Rikers Island,” said Mayfield.

In 2008, he spent another 11 months on Rikers Island after he was charged for the possession of controlled substance. Mayfield had 1.2 grams of cocaine on him during the arrest and the judge set the bail amount to \$130,000 to send a message to him. He still couldn’t afford to pay it.

After overcoming his history of addiction and stayed clean for many years, Mayfield’s currently pursuing his undergraduate study at New York University as a part-time student. Having majored in social work, Mayfield also works as a campaign leader at Just Leadership USA, a non-profit advocating for decarceration and the closure of Rikers Island.



(Marvin Mayfield spoke in a rally calling for transformative legislation to end money bail in New York State at Foley Square on Nov. 14th, 2018.)

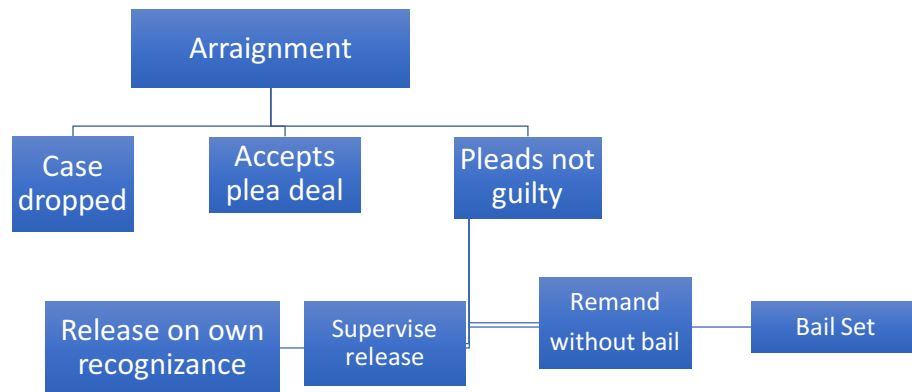
As an activist, Mayfield started to make trips to Albany and lobby for legislation changes, attend protests to speak up about his personal experiences and let more people know about the issues.

He said he wanted to protect the presumption of innocence and helped those who have similar experiences but are still stuck in jails now.

A [report by the Independent Budget Office](#) showed that in 2016, 78 percent of the city's jails were pretrial detainees and among them, 72 percent were incarcerated because they were unable to post bail at arraignment. On an average day, 52 percent of all pretrial detainees were held as they couldn't pay the bail.

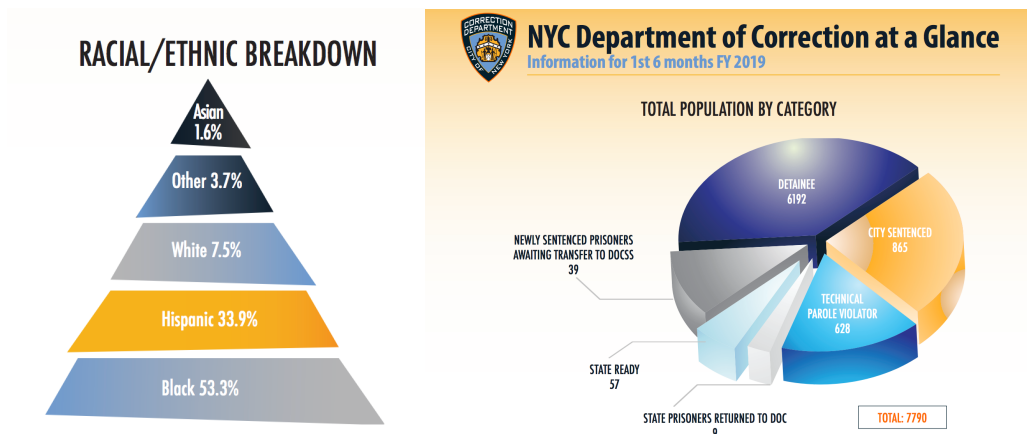
Part 2: What's Wrong with Bail?

What is bail? Astonishingly, many people have misunderstood it as a non-refundable fee paid to the court. As a matter of fact, when a person is arrested in NYC and taken to arraignment, the first time the defendant appears in court, the judge has a couple of options. He can drop the case, or accept a plea deal. If the defendant pleads not guilty, the judge can release the person on own recognizance, release him on supervised release, remand the person which means keeps him in custody until the case ends or give a bail option.



The purpose of the bail is to ensure that the defendants show up to court when ordered. If the defendant comes back to court as required, the bail money will be returned when the case has closed, even if the person is convicted in the end. However, if he doesn't come back or violate his bail conditions, the bail will be forfeited and will not be returned.

The defendant could pay the money or obtain a bond from a commercial bail bondsman to get out of jail. But if none of these options work, he has to wait in jail until the case ends. This is the cash bail system.



(Source: NYC Department of Correction)

According to the statistical report by NYC Department of Correction, during the first six months of fiscal year 2019, the average daily population of inmates was 8,136 while 53.3% of them were black and 33.9% of them were Latinos. About 79.5% of them were detainees awaiting trial, who were not yet convicted and still legally presumed as innocent. The NYC Department of Correction manages 11 inmate facilities while 8 of which are located on Rikers Island.



(Clinton Washington worked on his clients' paper work at the office of Bronx Freedom Fund in Bronx, New York on Nov. 9th, 2018.)

Clinton Washington, a Client Advocate from Bronx Freedom Fund, a nonprofit that helps people to post bails, said most of the misdemeanor cases take 6 months to a year and that whole time if you can't pay bail, you are trapped in jail. "What we found is that just being out of jail is a number one deciding factor if a person is convicted or not," said Washington, a bearded black man wearing a woolen hat and a green Hawaiian shirt. "Because you are in jail, you can't get out,

you just take a plea, you just say you did it. And that could affect you from jobs, housing, benefits.”

According to the data by the Department of Correction, for those unable to post bail immediately, the median bail was set at \$5,000. For families that were struggling financially, they simply couldn’t afford it.

Part 3: Sweeping National Bail Reform

The tragedy of Kalief Browder, a 16-year-old boy from Bronx who killed himself in 2015 after being detained on Rikers Island for three years before being convicted, has turned into a symbol of the new wave bail reform. Browder was arrested for allegedly stealing a backpack and his bail was posted as \$3,000. He declined to take a plea deal and couldn’t afford the bail. He was then imprisoned for more than 1,000 days on Rikers Island until his charge was dismissed due to the lack of evidence. Browder hanged himself at his parents’ house two years after his release. The city had agreed to pay \$3.3 million in settlement in January this year. His story had been produced into a documentary on Netflix.

Since then, activists in the criminal justice system have been actively pushing for the radical change of the bail system and set up projects and campaigns to help reduce incarceration. The National Bail Fund Network, a national project made up of over 50 community bail funds which

helped people to pay bails, was founded in September 2016 to help fight against mass incarceration, specifically around pre-trial detention. The network is currently hosted at Community Justice Exchange, a nonprofit that develops and experiments with tactical interventions to end mass incarceration.

“The majority of people who are held that are incarcerated across the country are being held pretrial,” said Pilar Weiss, the director of Community Justice Exchange. “Bail destabilizes entire communities and families by separating parents and their children from their homes, their jobs, creating a lot of insecurity in people's lives and extracting a huge amount of wealth from communities.”

Weiss added that about 95 percent of the people they've helped returned to their court dates and people usually missed court dates not because they wanted to flee, but for a number of reasons such as forgetting, work or unreliable transportation.

“We have to remember that there's a presumption of innocence,” said Weiss. “These are just people who have been charged and not in any way headed in court and had any evidence against them proven right. Judges should be upholding people's right to a fair trial and the presumption of innocence. And if there are concerns about people reappearing in court there are many proven ways to make sure people return to court including reminders, flexible scheduling of court dates and child care, transportation assistance. That's what people miss court. They don't flee.”

The national movement to end money bail swept the country as states including New Jersey, Arizona, California passed legislations to eliminate or reduce their reliance on money bail.

While Washington D.C. already has a cashless bail system, states such as Ohio and New York followed the lead to challenge the constitutionality of money bail.

Legislators, lawmakers and activists in New York have made bail reforms their top priorities.

Gov. Andrew Cuomo proposed bail reforms in his 2020 [executive budget proposal](#) which would eliminate cash bail and require the automatic release of people charged with misdemeanors (except those charged for sex offenses or domestic violence), nonviolent felonies and also enforce tighter rules on speedy trial.

The city has implemented multiple programs to help cut down the number of defendants facing bail. The large-scale supervised release program gives the judge the option to release some defendants who couldn't afford bail before trial. The defendants have to report regularly to their community nonprofits which could provide service referrals based on their needs. More than 11,000 people have entered the program since it started in 2016. The mayor's office said in a [report](#) that 89 percent of the defendants returned to the court dates and the program has helped to cut down 38 percent of the jailed population on Rikers Island.



(Source: NYC, A Roadmap to Closing Rikers)

In March 2017, Mayor Bill de Blasio first announced the city's to close Rikers Island within ten years and replace it with community-based jails throughout the city. The plan aims to reduce the jail population to 5,000 people in order to shut it down. According to the city's status report, the daily population of Rikers Island has dropped to 8,070 in January this year, the lowest level in 40 years.

However, some activists feel that the ten-year time frame is too long. On a freezing afternoon, Marco Barrios, a bearded middle-age man wearing a pair of dark sunglasses and black jacket, made his first public speech in front of the Queens County Criminal Court since he was released from jail in April, 2017.



(Marco Barrios spoke in a rally about speeding up the process of closing Rikers Island in front of the Queens County Criminal Court on Oct. 30th, 2018)

“When the mayor finally agreed to our demand,” said Barrios with a deep voice. “When he said he would close Rikers, he told us it would take 10 years. Ten years is too long. And we all know it.”

Barrios was convicted of felony murder, a charge applied to the felon when he commits a felony and someone dies in the course of it, whether the death was intentional or accidental. After serving 24 years and 6 months in prison, Barrios came back home and joined JustLeadershipUSA, a nonprofit advocating for closing Rikers Island and ending mass incarceration.

Currently living in Queens, Barrios went to rallies and lobby visits all the time, either at City Hall, criminal courts, mayor's office or New York State Capitol in Albany, to show his support for bail reform and share his stories with the others.

“This is a dehumanizing and punitive model,” said Barrios, who has spent six weeks on Rikers Island and later sent to Upstate Correctional Facility. “A broken system to prosecute low-level offenders. Rikers Island breaks a human, it’s traumatic. It’s full of people waiting to go to trial. They have no money for bail and you are guilty until proven innocent. People lose homes, jobs, relationships and they don’t have any resources. We want a new borough-based rehabilitating system that can deal with the bail system with proper resources. People with health issues shouldn’t be sent there.”



(Marco Barrios attended a rally in Manhattan, New York calling for the state to end mass incarceration and stop shackling pregnant women on Nov. 15th, 2018.)

The nonprofit JustLeadershipUSA where Barrios is working with has led multiple campaigns to help end mass incarceration. In addition to its CLOSERikers Campagin which demanded the city to shut down the notorious jail complex and “stop caging people in barbaric facilities”, the organization also launched a grassroots campaign FREEnewyork in 2017 to call for decarceration. The campaign, joined by more than 250 organizations, is looking to overhaul the New York State’s pretrial justice system by demanding the elimination of money bail, the guarantee of speedy trial and a transparent evidence disclosure law.

The campaign supported Senator Michael Gianaris’ sponsored bail reform bill which would remove cash bail and require the use of pretrial detention only for offenders who pose a high flight risk and cases involved with witness intimidation and serious injuries.

“Bail is a means to imprison the poor,” said Gianaris at a breakfast meeting at St. Paul’s Chapel in January this year. “It serves no other purpose in the society... Do not judge people based on their wealth, judge them based on their guilt or innocence. That requires the jury to listen to the evidence and make a decision. What we have now is not that and we need to change it.”

As the Deputy Majority Leader in Senate, Gianaris also talked about his proposal bill at the breakfast. “My legislation says let’s take money out of the equation. I don’t care what the primary accuse is, I don’t care if it’s low level, high level. Why should someone’s rich be free and someone’s poor be in prison, no matter what the charge is.” said Gianaris.

The bill is currently in committee in the Democrat-controlled Senate and the legislators in Albany said they are close to making a consensus on the reforms. If passed, the act would take effect in November this year, according to the bill.

A [report](#) issued by the Independent Commission on New York City Criminal Justice in December last year estimates that criminal justice reform in Albany could reduce the number of people in jails by 3,000 or more. The report said the city-level bail reform has already cut the jail population by 1,500, 15 percent of the total, since September 2016 and it is time now for Albany to act.

However, some people are skeptical about the effects of rapid bail reforms and worried about the potential dangers it might impose.

One of the main objections comes from the American Bail Coalition, a trade association made up of bail insurance companies who are responsible for underwriting criminal bail bonds throughout the United States. The coalition said on its website that the criminal justice reforms would end up weakening accountability in the criminal justice system by fundamentally making it easier for repeat criminals to get out of jail while leaving the victims behind and make our communities less safe.

Jeff Clayton, the executive director of American Bail Coalition, said the complete elimination of money bail could be dangerous and there would be more people detained without bail.

“When you eliminate the right to bail it causes more jail and the reason is because judges don't trust the alternatives. The pressure to incarcerate is huge and the system will incarcerate as many people as prosecutors and judges will always believe that having somebody in jail is safer than having them in the community. You risk transferring too much power to the prosecutors and the judges to lock people up.”

He added that bail is important because it challenges the state and it allows people to control their own destiny. “If we completely eliminate the right to bail. I think that's risky business because then we can say that the government simply has the power to lock up whoever they want. I don't think that's the type of system that we want.”

Clayton, who has spent six years working in government services including the Colorado State Courts and Probation Department, said a large amount of people with mental health problems, coherence disorders and substance abuse issues went to jails and they were there because there was nowhere else for them. He added that the real issue was there's no mental health system and drug treatment facilities for them to go and as a country we should take serious steps to fix that.

In order to improve the criminal justice system, Clayton explained that the top priority should be the guarantee of speedy trial, meaning the defendant is tried for the alleged crimes within a reasonable time after being arrested. “If we decrease the time period it's better for everybody. It's the most bipartisan neutral thing that we can do,” said Clayton.

The coalition also issued a letter urging people to reject Senator Michael Gianaris' bail reform bill. The letter said the bill would expand the use of preventative detention in New York and give the government the power to deny the unconvicted defendants' right to bail.

“It creates a new dragnet of government and non-profit agencies which are going to supervise the very people presumed innocent of the pending charges – while imposing onerous conditions such as the modern-day shackles of a GPS ankle monitor,” the letter wrote. “All of this at State expense, creating massive new statewide and local bureaucracies to supervise innocent defendants prior to being convicted.”

Part 4: Bondsman

The for-profit bail bond business has grown into a \$2 billion industry in the United States.

According to a [report](#) by the NYC Comptroller's Office in 2018, private bail bond accounted for more than half of bail posted in the NYC court system and \$16 to \$27 million were paid per year in nonrefundable fees to private bail bond companies. The U.S. and the Philippines are the only two countries that still use bail bonds.

For those who simply don't have the money to bail their loved ones out, they turned their last hope to commercial bail bondsman who offered to help bail people out with a nonrefundable fee called the premium. In New York, the bondsmen can charge a fee up to 10 percent for bail under \$3,000 and six percent for bail exceeding \$10,000 under the law. They can also get the money back no matter how the case ends. However, the bondsmen risk losing their bail money if the defendants fail to show up in courts. When a defendant's family couldn't pay the premium in full amount, they could loan the money from the bondsman and pay back with an installment plan, sometimes putting down collaterals.

If the defendant fails to appear in court, the bondsman has the power to arrest the defendant and pursue the fugitive into any dwelling to make the arrest. Sometimes they bring in recovery agents also known as bounty hunters to help with the process.

However, the media has reported that some bondsmen use illegal practices to rip off their clients and charge steep fees for late payments. Complaints varied from kidnapping, false imprisonment

for purposes of extortion to forged property liens and embezzlement of collateral, reported by the New York Times.

In February 2018, The Department of Consumer Affairs (DCA) filed charges against a bail bond agent Marvin Morgan and several insurance companies for “engaging in deceptive and unlawful trade practices that preyed on vulnerable New Yorkers desperate to help bring their loved ones home”, according to the press release. The investigation found that the bondsman charged illegal fees exceeding the legal limits, failed to return collaterals to his clients and provided customers with misleading receipts. The lawsuit is the first of its kind against the bail bond industry in New York State and the “DCA is seeking more than \$57,500 in fines and restitution for 16 consumers.” The case has been settled in November last year.

Before the enforcement actions taken by the DCA, the bail bond industry was solely regulated by the Department of Financial Services. Recent laws that took effect in February this year set up a complaint mechanism at the Department of Consumer Affairs for consumers to report violations which will be referred to the police department for enforcement.

In defense of the industry, the executive director of American Bail Coalition Jeff Clayton said although there had been some incidents in the industry, the current image of bad bail bondsmen portrayed in media is a generalization and the rates charged by bondsmen are regulated meaning they can’t exploit people in a routine transaction. “There's no interest charges in bail until there's a judgment meaning a lot of time has gone on and someone's refused to pay the bail for a long time,” said Clayton.

[Criminal justice reform activists](#) also argued that the bail bond businesses profit from the system by keeping poor people in debt even after their charges were cleared. They also called for the elimination of bail bond industry, arguing that it destabilizes families and leads to long-term financial crisis.

Here's what happens. When you go to a bail bondsman, you pay the nonrefundable fee, roughly ten percent of the total bail amount, to get your friend or family member out. But even when the case is dropped in the end, this money is gone. If you have used an installment plan, you still have to pay the loans back to the bondsman. Hence, lots of families have been struggling with the debts.

Chris Blaylock, a licensed New Jersey bail bondsman, said despite what had been said in the media, he believed his industry is advocating for the defendants by offering them the right to bail and replacing bail with supervise release or risk assessment tools is dangerous.

"People have a right to be free even when charged," said Blaylock. "At least have an avenue to exercise their right to bail or right to pretrial release before trial. Going to this idea of complete government oversight with monitoring as opposed to having a third party and financial accountability seems to be the idea that we can preventively detain every bad actor out there that's been accused of something and that to me is problematic."

Blaylock said his industry is also helping the victims by making sure people accused go to courts. "There's a place for accountability. I don't know where along the way victims have gotten left out of the discussion. Our industry has never advocated for low level offenses and first-time offenses to have monetary bail," said Blaylock.

Blaylock learnt about the bail business when he was a teenager. His step-dad and mum started a family bail business which run for about 30 years and he often visited the jails with them to sign up clients.

Later on, Blaylock decided to start his own bail business, EZ Bail Bonds of New Jersey. On a regular day, he was answering phone calls from families of defendants about securing a bond and determine whether to take the client based on the risk level, calling the defendants for court dates and dealing with people's failure to appear in courts. Blaylock said they also provided referrals on legal services and drug treatment facilities to the defendants. "We stay in touch with our defendants on a regular basis but we want to try to stay out of their lives as much as possible while monitoring them as best as we can as to what's required of the courts," said Blaylock, who's currently working for the American Bail Coalition.

Bondsmen have the risk of losing the bond and potentially losing the bail money if their clients don't show up in courts. When the defendants failed to appear, the bond will go into default and the bondsmen get a grace period, usually around 60 to 90 days to turn the accused in.

When asked about the recovery process, Blaylock said a lot of failures to appear in courts were because of drugs and abuses and often people were just afraid. He said after they've found out what happened, they would walk through the process of getting back into courts with the defendants, get a new court date for them and request the reinstate of the bond.

However, in some occasions when things could be dangerous for him, he brought in the recovery agent, also known as the bounty hunter, to help with the process.

“If this is a violent person who has ties to organized gangs and we know all this and there is a serious threat,” said Blaylock. “We may have the recovering agents that are more equipped and more manpower to deal with this. We want to diffuse the situation before anything happens.”

Blaylock built the website USBailReform.com in February last year as he believed there were many misconceptions about the industry. He wanted to expose the truth and offer an alternative view of bail reform which encourages accountability and balance.

“If you want to improve the criminal justice system,” said Blaylock. “Speed up trials, speed up the criminal case process. We can't have cases going on three years for a simple drug charge and we can't have somebody going to jail getting locked up and sitting in there for seven days before seeing a judge.”

Part 5: How Well did the Alternatives Work?

In January 2017, New Jersey overhauled its criminal justice system by eliminating money bail. Judges now use the risk assessment tools designed by algorithms to assess defendants' criminal histories and determine whether to release them or keep them in custody for pretrial. Previously, judges in New Jersey couldn't order defendants held without bail.

According to the Marshall Project, 10,193 eligible defendants were processed during the first three months since the bill took effect and the judge had only set bail for eight times. Nearly 85 percent were given pretrial release, some with conditions such as electronic monitoring. Another 1,262 defendants were held in custody without bail as the judge believed they were too risky to release or they were charged for a serious crime.

On November 8th, 2018, at a panel discussion at P.S. 198 on the Upper East Side, Insha Rahman, program director of Vera Institute of Justice, a nonprofit dedicated to tackle the issues of mass incarceration and the loss of public trust in law enforcement, criticized the risk assessment tools used by judges.



(Insha Rahman discussed the flaws of risk assessment tools at a bail reform meeting at P.S. 198 on the Upper East Side on Nov. 8th, 2018.)

As a former public defender at the Bronx Public Defenders, Rahman said the factors used by the risk assessment tools are not transparent and subject to racial bias that already exists in the criminal justice system.

The tools, used for pretrial risk assessments, analyzed data about the defendants' criminal history and past attendance at court dates, to predict how likely the person will skip court dates or commit a new crime if released before trial.

"It's hard to challenge why is someone high risk or low risk, especially because the data used to build these risk assessment instruments actually is based on arrest data that's often problematic, flawed and racist," said Rahman.

Critics also argued that the risk assessment tools which relied heavily on prior convictions can permeate racial disparities since communities of color have been over-policed and people there are more likely to be over-charged and forced into pleas. They also said that compressing a person into a set of data analyzed by an algorithm does not predict human behaviors.

“I think the bigger problem with risk assessment instruments is that they are often used to determine whether or not somebody should be released based on a false concept of risk when really there is no,” said Pilar Weiss, the director of Community Justice Exchange. “If you're saying that somebody is risky, risky of what? Lots of risk assessment instruments end up prosecuting people in very broad categories that don't actually define risk.”

Some also argued that it's impossible to build one without bias because any tools designed will use historical data in the criminal justice system. But for now, what's commonly agreed is that there hasn't been sufficient evidence to prove any of the points. We just don't know yet.

In the upcoming weeks, Marvin Mayfield, who was stuck on Rikers Island for four months for a crime he did not commit, will join other activists for a lobby trip to Albany. They hope to keep some pressure up for the politicians and remain the issue in the forefront of the public and the legislators. It's a long-enduring fight, but they will not give up.

Source List:

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6. Pilar Weiss, (202)-279-1656, pilar@communityjusticeexchange.org
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Reporting Memo:

I came across this story idea when I was reporting about a rally held outside the Queens County Criminal Court for a deadline writing class. I became super interested in the personal stories in the criminal justice system as the issue is so large-scale and they also resonate with people who don't even have those kinds of experiences. It was the time when the bail reform debate was sweeping the country and legislators in Albany were also looking at reforms proposed.

Some of my sources were involved in the bail reform movements and they gave me a comprehensive picture of what they are trying to do, how did they do it and their long-term goals. I went to rallies, protests and meetings with them and got to learn more about how lawmakers and decision-makers thought about the reform. It was also super informative by talking to leaders in the bail fund industry and they helped me to understand and navigate the process of bailing someone out.

I have been looking for the perfect character for the story, someone who has suffered from the bail system because they are poor, someone who couldn't afford bail and was forced to take a plea. I had some troubles finding the people currently undergoing the process because it will be illegal to ask confidential information before the case ends.

Luckily I found Marvin at a bail reform meeting and he was passionately talking about his experiences. And I thought that's it, this is my character. I've always knew it would be difficult to find a bail bondsman who's willing to talk about the industry since the recent portrayal of their businesses are pretty bad. But I did find Chris who had been in the industry for 30 years who's willing to speak up and reveal the misconceptions about the bail bond industry. Overall, I think this is a successful project.



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Ga. Case Won't Be Justices' Last Chance On Bail Reform

By RJ Vogt | April 7, 2019, 8:02 PM EDT

While the U.S. Supreme Court recently rejected a case challenging a Georgia town's policy to wait up to two days before offering arrestees a chance to prove they can't afford bail, a growing split among appellate courts could pressure the justices to tackle wealth-based detention in the near future.

When the high court turned down the petition of Maurice Walker on April 1, Executive Director Jeff Clayton of the American Bail Coalition, a bail bond industry group, said in a statement that the denial "sent a very strong message that monetary bail and bail schedules are constitutional if the proper due process procedures are followed."

But Walker's attorney Sarah Geraghty, director of impact litigation for the Southern Center for Human Rights, told Law360 that a developing circuit split over the level of scrutiny judges should apply to bail policies will likely get the Supreme Court's attention eventually.

"The denial of cert is not the end by any means of these bail challenges. They really have only just begun."



KELLEN FUNK
law professor
Columbia University

"To suggest that the court put its stamp of approval on money bail in general ... that has no basis in fact," she said. "It was a [certiorari] denial, so the court didn't issue any opinion."

Kellen Funk, a Columbia University law professor who's writing a book about the history of bail in America and filed an amicus brief in the case, told Law360 that the high court often prefers to wait until more circuit courts have weighed in on a matter before they take it up.

"We could speculate endlessly on why the court does or does not take a case on cert," he added. "The denial of cert is not the end by any means of these bail challenges. They really have only just begun."

The denied petition, *Walker v. City of Calhoun*, centers on the detention of a 54-year-old unemployed man whose only income was Social Security disability

payments, who was arrested for being intoxicated in public in September 2015.

Walker spent six days in jail because he couldn't afford a \$160 bail bond based on a preset bail schedule that did not factor in his ability to pay. His suit claims the city violated the Fourteenth Amendment's equal protection clause by "jailing the poor because they cannot pay a small amount of money" while allowing those who could afford it to walk free immediately.

After the suit was filed, Calhoun altered its policy with a standing bail order that continued using a bail schedule but provided for a hearing and court-appointed counsel within 48 hours to accommodate those claiming indigency.

Defendants found to be too poor to pay at that hearing would be released on recognizance; if no hearing was able to be held within 48 hours, the new policy also allowed the accused to be released without paying.

Despite the changes, U.S. District Judge Harold Murphy ruled the policy unconstitutional because it still allowed those with means to get out of jail immediately while the poor had to wait 48 hours. Blocking the standing bail order, the judge said jail personnel and court staff must verify an arrestee's inability to pay "as soon as practicable after booking" via a sworn affidavit.

On appeal, a split three-judge panel at the 11th Circuit vacated Judge Murphy's injunction, ruling that Walker and other indigent arrestees suffer "no absolute deprivation of the benefit they seek" under the new policy because they must "merely wait some appropriate amount of time" to get the same pretrial release as the more affluent.

"Such scheme does not trigger heightened scrutiny under the Supreme Court's equal protection jurisprudence," the majority wrote.

But whether such bail policies trigger heightened scrutiny — legalese that refers to a skeptical review of a government action — is actually up for debate.

In March, a California federal judge ruled that San Francisco's use of bail schedules **was unconstitutional** based on a "strict scrutiny" standard, which requires the government to prove it has a compelling interest and that the underlying policy is "narrowly tailored" to achieve that interest.

In that case, plaintiff Riana Buffin had spent 46 hours in jail after her arrest on suspicion of grand theft because she couldn't afford bail. The stint caused her to miss time at work, and although she was never charged, Buffin lost her job. In a March 4 ruling, U.S. District Judge Yvonne Gonzalez Rogers found that the use of the bail schedule had significantly deprived Buffin of her fundamental right to liberty without considering less restrictive alternatives.

The judge went on to quote the dissent in Walker's Eleventh Circuit case, which itself had quoted the Supreme Court in saying that "any amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual."

On the other side of the spectrum, the Fifth Circuit ruled in August that **a Texas county's bail schedule policy** of holding the indigent for 48 hours before granting an individualized hearing was "subject only to rational basis review" because it did not concern an alleged failure to consider alternatives.

The Eleventh Circuit's majority in Walker also reviewed the at-issue bail policy

using a rational-basis standard, writing that "if ... every policy that affects people differently based on ability to pay must be justified under heightened scrutiny, the courts would be flooded with litigation."

But the dissent in Walker's case, by U.S. Circuit Judge Beverly Martin, noted that using that standard allowed Calhoun to avoid explaining why it was "reasonably necessary" to treat poor plaintiffs differently.

In a footnote, Judge Martin observed the city offered one justification for its 48-hour detention policy at oral arguments: "to get the players to the game," a reference to getting the small city's only municipal judge into court.

Clayton from the American Bail Coalition told Law360 that the Supreme Court's refusal to take up the case was "a big deal" because it allowed the Eleventh Circuit's reliance on a rational basis review of the bail policy to stand.

"How would you ever be able to run a criminal justice system if strict scrutiny was the standard?" he said. "That just seemed extreme."

Clayton added that, while allowances must be made for areas with limited court staff and resources, he agrees with advocates who argue the time period from arrest to ability-to-pay hearing "should probably be shorter." He supports laws that require a hearing within 24 hours, such as in Florida.

Meanwhile, Geraghty said that at the very least, her client's case has "encouraged many jurisdictions to reconsider their reliance on wealth-based detention."

"Under the Eleventh Circuit's decision in Walker, cities that jail people for longer than 48 hours before conducting an inquiry into ability to pay would be wise to revise their bail policies," she said.

Have a story idea for Access to Justice? Reach us at accesstojustice@law360.com.



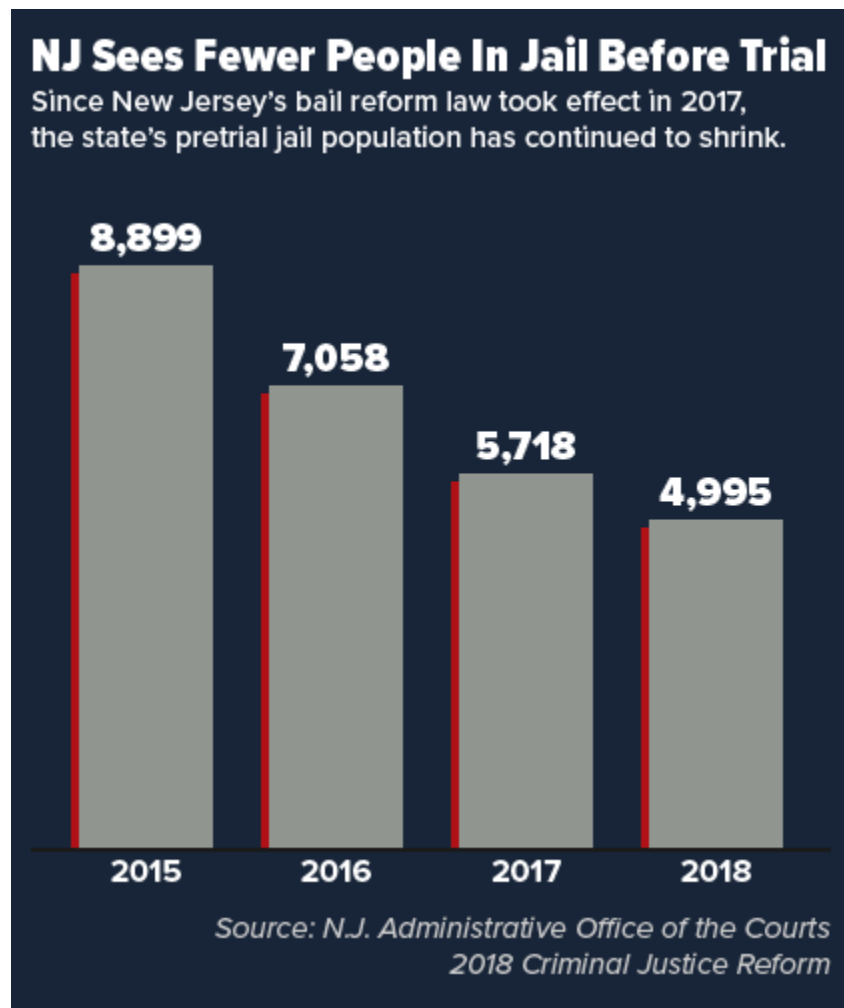
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Is Criminal Justice Reform Working In NJ?

By **Kevin Penton** | April 7, 2019, 8:02 PM EDT

The fallout from New Jersey all but eliminating cash bail in 2017 continues to transition from speculation to hard numbers, as state officials last week released statistics demonstrating that the percentage of those released without posting bail who skipped their hearings or committed another offense remained virtually unchanged.

For some advocates, Tuesday's report on the effects of criminal justice reform in the state shows that New Jersey is a model that other jurisdictions should follow.



According to Alexander Shalom, senior supervising attorney for the [American Civil Liberties Union](#) of New Jersey, the statistics demonstrate that New Jersey is virtually just as safe with the near elimination of bail as when the

system was in place, with the added bonus that increasing numbers of those who are presumed innocent can now await their trials while continuing to be together with their families and working or studying.

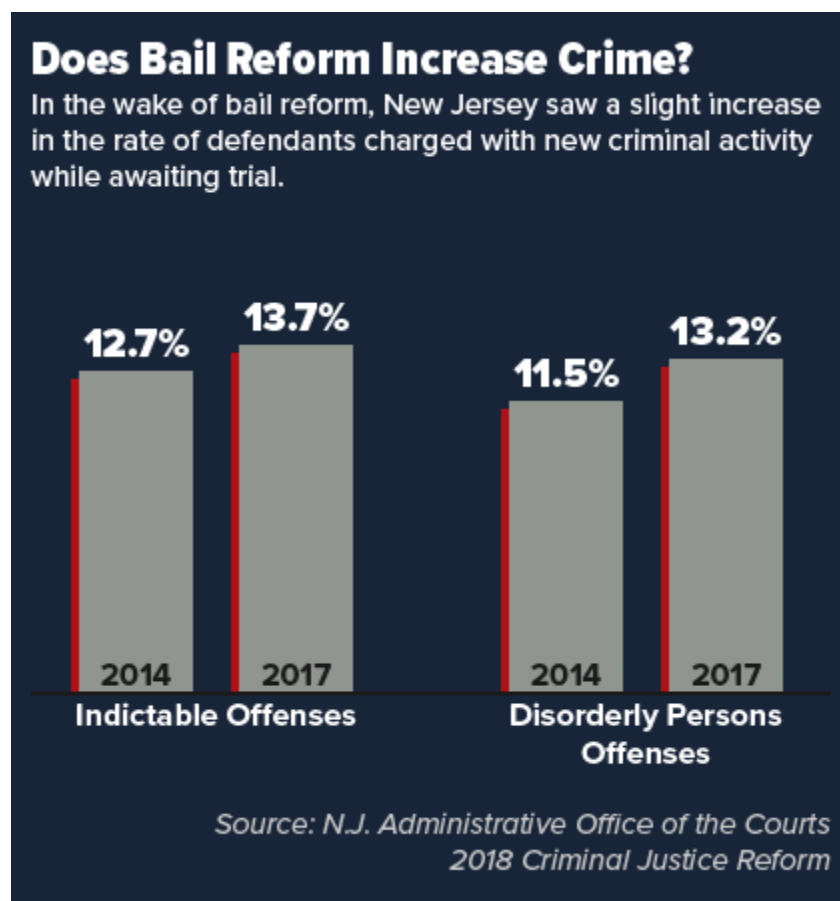
“The bail industry had been predicting that ... crime would run rampant on the streets and no one would show up in court,” Shalom said. “I think their prediction has been thoroughly refuted by this data.”

Meant to secure the individuals’ appearance at subsequent legal proceedings, bail has long been viewed by criminal justice reformers as a legal mechanism that unjustly punishes the poor and rewards those with deeper pockets. Meanwhile, the bail industry has long countered that getting rid of bail would lead criminal defendants to skip their hearings and commit new crimes.

Advocates contend the new numbers from the state judiciary don’t bear out those fears.

The average appearance rate for hearings was 92.7 percent in 2014 and 89.4 percent in 2017, while the percentage of those who were released and subsequently were charged with an indictable crime was 12.7 percent in 2014 and 13.7 percent in 2017, according to Tuesday’s report.

Overall, New Jersey’s jail population plummeted from more than 14,000 inmates on one day in October 2012 to more than 8,000 inmates on the same day in 2018, the report found.



Jeff Clayton, executive director of the American Bail Coalition, said that while he does not dispute the validity of the statistics, he believes that a major contributing factor for the plummeting jail population is not bail reform, but a law enforcement decision to issue significantly more summonses — which simply list a date to appear in court — than arrest warrants.

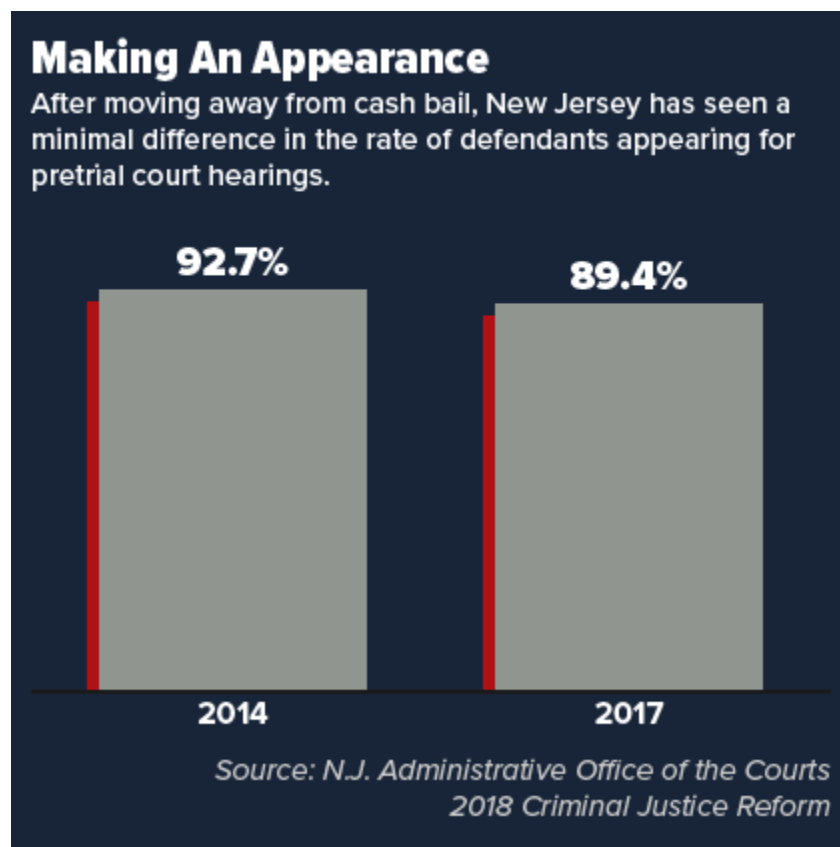
The percentage of all defendants who were issued a summons increased from 54 percent in 2014 to 71 percent in 2017, according to the report. Overall, the

total number of summons issued increased from 69,469 in 2014 to 98,473 in 2017, a 41.8 percent increase, the report said.

“New Jersey did not need a constitutional amendment to achieve this,” said Clayton, referring to a process that in 2014 led voters to approve an overhaul of the system.

Other states considering whether to implement bail reform or that are debating how extensively to roll back the practice can now look to New Jersey as a model that works, said Roseanne Scotti, New Jersey state director of the [Drug Policy Alliance](#), a nonprofit organization that advocated for eliminating bail in the state.

When bail reform kicked in as part of the New Jersey Criminal Justice Reform Act, reform advocates were concerned that some judges would be reluctant to change their longstanding practices, Scotti said.



While several counties appear to have higher incarceration rates than others in the months since the initiative commenced, demonstrating some of the work that remains to be done, Scotti said the judiciary’s report makes it clear that bail reform has worked.

“It was what we expected,” Scotti said. “Particularly when you have a process like what you have here in New Jersey, most people do come back to court, most people do not commit new offenses.”

To determine how restrictive the release conditions should be, courts now use a system that examines defendants’ criminal histories and other factors to issue them a rating of 1 to 6, with 1 representing the lowest risk and 6 the greatest, according to the report. Those with higher ratings are typically issued higher release restrictions, such as more frequent check-ins, electronic monitoring or detention.

The state judiciary trumpeted the effectiveness of the evaluation system, noting that of defendants released before their trials, 9.7 percent of those with a 1 rating were charged with new indictable crimes or disorderly persons

offenses, compared to 61.6 percent of those with a 6 rating, according to the report.

Overall, of 44,383 defendants deemed to be eligible for release without bail in 2018, courts ordered only 102 individuals to post bail, according to the report. Of those 102 defendants, 90 were ordered to post bail after they violated their pretrial release conditions, such as not appearing at a required court event, according to the report.

“New Jersey’s criminal justice system has begun to remove inequities created by the heavy reliance on monetary bail,” Chief Justice Stuart Rabner said in a statement.

But while groups like the ACLU cheered much of the data, the report also indicated that racial disparities among the state’s prison population remain.

The jail population broken down by race remained virtually unchanged, with blacks representing 54 percent in both 2012 and 2018 and whites representing 28 and 30 percent, respectively, according to the report.

Moving forward, the ACLU plans to seek additional data related to the changes and advocate for ways to reduce the racial disparities that continue in the jail population, Shalom said.

“We need to simply not maintain the status quo, but eliminate the racial disparities that plague our system,” he said.

--Editing by Pamela Wilkinson.

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Bail bond preservation looks like a winner

By [THOMAS ELIAS](#) |

April 8, 2019 at 9:59 pm

It's never easy to convince Californians they should reverse decisions made by the legislators they elect, as Republicans led by the failed gubernatorial candidate John Cox discovered last fall.

Cox made his pet proposition, a referendum to repeal a 12-cent gasoline tax increase passed in 2017, the centerpiece of his run for governor, but saw it lose by a 57-43 percent margin, not even close.

But California referenda – the term for propositions aiming to overturn laws passed by the Legislature – can win, as sponsors of a 1982 measure proved when they overwhelmingly killed a plan called the Peripheral Canal, designed to move Northern California river water south around the Delta of the Sacramento and San Joaquin rivers.

And now, anyone looking for a nearly guaranteed winning proposition in next year's election should check out an already-qualified measure to repeal last year's law eliminating the centuries-old cash bail system from California criminal courts.

This law, quickly signed by ex-Gov. Jerry Brown after it passed last summer, appears doomed by the new referendum sponsored by the state's more than 3,000 bail bondsmen. They, of course, have a vested interest in keeping the present system: If cash bail goes, they would lose established businesses, jobs and income amounting to about \$2 billion per year.

Ending cash bail looks like a loser not for legal reasons, but because it draws opposition from both the left and the right. Republicans like Cox and the GOP's defeated candidate for state attorney general, Steven Bailey, instantly condemned the new law, passed as SB 10, claiming it was both soft on criminals and unconstitutional.

Their claim won't be tested unless the bail bond industry's proposition fails in late 2020. That's because the no-cash-bail system SB 10 set up is now in abeyance even though Gov. Gavin Newsom tentatively budgeted \$75 million to get it going.

So strong is the support for cash bail that this referendum qualified for the ballot in near-record time. Sponsors had 90 days to gather the 365,888 valid voter signatures needed to put their proposition on the ballot. They took just 70 days and collected more than 576,000.

Support for keeping cash bail, at least for now, comes from both liberals and conservatives. The American Civil Liberties Union and others on the left initially supported SB 10, but were turned off by the system that would replace cash bail if the law ever takes effect. This plan was added into the bill in the last hours before it passed, and criminal justice critics fear it might result in keeping more pre-trial defendants in custody than cash bail ever has.

The planned new system, called “risk assessment,” would rate all persons bound over for trial in California for their likelihood of disappearing or committing more crimes if left free while awaiting court appearances. People accused of misdemeanors would have to be freed within 24 hours no matter their background.

The ACLU, for one, fears the new system could give judges new power to hold felony defendants indefinitely before trial, and might perpetuate racial or religious prejudices, leading to more persons languishing in jail than now do.

While Republicans opposed the no-cash-bail law, Newsom and other Democrats praised it, saying money should never decide whether a defendant stays in jail, isolated from family and friends.

Without doubt, money can do that now: If a defendant cannot make bail or afford the 10 percent down payment on bail usually required by a bondsman, that person stays in custody.

The bail industry also claims the new system would be unsafe. “Where it has been used, (some) violent offenders have been declared “safe,” while others with minor blemishes on their records have been deemed “high risk” and left stuck in jail,” said Jeff Clayton, executive director of the American Bail Coalition.

Another factor: While California is as solidly “blue” politically as any state in America, it also has a long history of passing tough anti-crime measures like “three-strikes-and-you’re-out,” and by large margins.

Taken together, all this makes the new referendum almost a sure thing for passage, which would send would-be criminal justice reformers back to their no-cash-bail drawing boards.

Email Thomas Elias at tdelias@aol.com. His book, “The Burzynski Breakthrough: The Most Promising Cancer Treatment and the Government’s Campaign to Squelch It,” is now available in a soft cover fourth edition. For more Elias columns, visit www.californiafocus.net.



Is Bail Reform Dead?

A recent ruling in Georgia may have an affect on the future of bail reform

APRIL 30, 2019



EYE ON THE COMMUNITY



Photo: Mario Tama / Staff

By Steven John

Jeff Clayton is the Executive Director of the American Bail Coalition, a trade organization comprised of national bail insurance companies that are responsible for underwriting criminal bail bonds throughout the U.S.

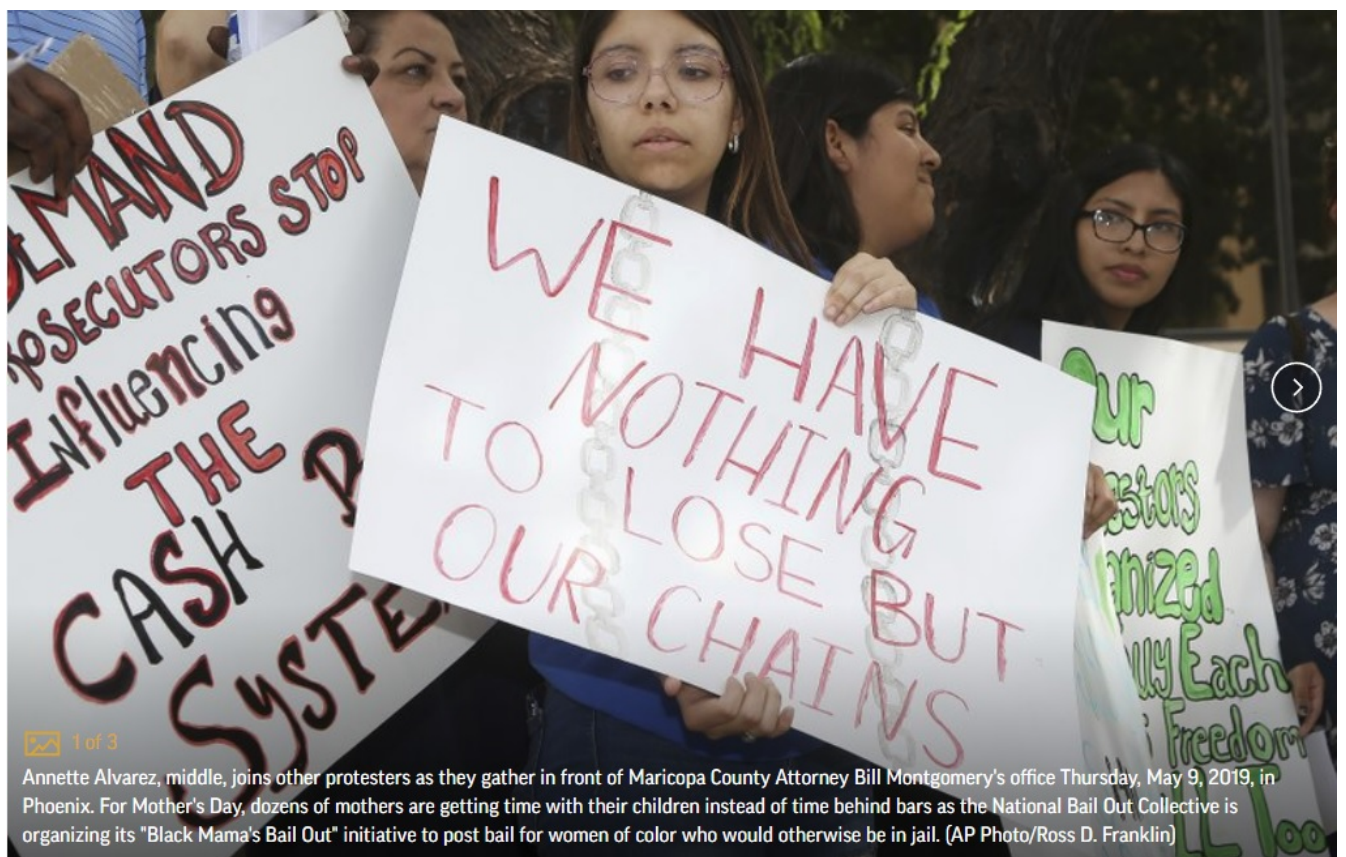
Mr. Clayton came on the program to update us on the latest developments relating to bail reform and California Senate Bill 10 (SB10).

California Senate Bill 10, which would have abolished cash bail, has been put on hold for the time being.

Listen to the interview in this segment of [Eye on the Community](#).

Activists give jailed moms a Mother's Day gift: bail

By TERRY TANG
May 11, 2019



PHOENIX (AP) — Paz Lopez was set to spend Mother's Day behind bars. The 42-year-old mother of six had been locked up in a Phoenix jail for the past month on forgery and other charges. She couldn't post her \$2,050 bail.

But on Thursday night she walked out and into a car waiting to give her a ride home, thanks to a drive to bail out moms so they can spend Mother's Day with their kids. In a tearful video made immediately after her release, Lopez said it was a privilege that she would now get to see her children. She welled up when speaking about the coming birth of her first grandchild.

"There's just no greater feeling than being a mother," Lopez said. "I'm grateful for both of you to help me be able to spend the day with them and be able to see my grandchild be born."

Lopez had her bail covered by Living United for Change in Arizona, or LUCHA, a social and racial justice group. The organization said they were inspired to do this for a second year by an initiative known as "Black Mamas Bail Out," which is posting bail for dozens of mothers of color for the third straight year.

The effort is organized by the National Bail Out collective, a coalition of various grassroots groups, attorneys and activists nationwide. The campaign hopes to bail out more than 100 women in 35 cities in time for Mother's Day. The objective is not just to reunite families but to push for change in the cash bail system.

Critics contend the nation's courts are unfairly punishing poor defendants by setting high bail for low-level crimes that causes them to languish in jail for months, separating them from their jobs and families. In some cases, they remain locked up until their case is dismissed or they take a guilty plea just so they can get out of jail, albeit with a criminal record. There has been a national push to reform bail by advocates who say incarceration should depend on a suspect's risk to public safety, not the ability to pay.

Mary Hooks, co-director of Atlanta-based Southerners On New Ground, came up with the idea in 2016. She joined with Law For Black Lives, a female-led network of lawyers and legal advocates, to bring together a collective of organizations. It's been difficult at times to get sympathy, she said, because people often think someone sitting in jail pre-trial must have done something wrong.

"We're in a political time right now where 'Barbecue Becky' or anyone else can call the police on someone and you can get arrested instantly for barbecuing," Hooks said, referring to the white woman who called police on two black men using a grill in an Oakland, California, park. The men were not arrested. "This notion 'you're in jail because you've done something horrible,' we have to remind ourselves we have a Constitution that says 'innocent until proven guilty.'"

Jaymeshia Jordan, of Oakland, said she would have faced another 10 months in jail if she hadn't been rescued by a bailout two days before last Mother's Day by Oakland advocacy group Essie Justice Group. Jordan, who declined to say what she was arrested for, faced a \$450,000 bail. She had no way of paying even a fraction of that on her own or with a bail bondsman.

"I would have just sat in custody till my case was over," Jordan said.

She was in jail for three months. In that time, her 5-year-old son lost his first tooth and learned how to tie his shoes.

Organizations choose who to assist based on referrals from attorneys and other activists. They don't take into account whether a woman is accused of a violent or non-violent crime. According to the collective's organizers, the mothers they help show up at court at "high rates" but the majority of the money they've handed out for bail hasn't been returned.

LUCHA, the Phoenix group, plans to fund as many bail releases as possible with the \$9,000 they have raised. Organizers Nicole Hale said they will offer mothers additional support including court date reminders and rides.

"We don't just hand someone a piece of paper and say 'good luck.' They don't have to go through the system alone," Hale said.

Several studies suggest that bail amounts are set sometimes as much as three times higher for people of color, said Shima Baughman, a criminal law professor at the University of Utah College of Law. Even a \$200 bail for a misdemeanor crime can be beyond what's in a person's bank account.

According to a 2018 report from the non-partisan Prison Policy Initiative, roughly 2.9 million women are jailed in the U.S. every year. An estimated 80% are either pregnant or have children.

Women of color are even more heavily impacted, especially if they are working mothers who likely earn lower salaries, according to Baughman. A few days in jail can lead to the loss of a job or child custody.

“When women are the ones that bear most of the burdens in the family, their kids are the ones that are going to suffer,” Baughman said. “Because in many families, women are responsible for working outside the home and also for child care, they can face dire circumstances with their children when they are forced to serve even a couple of nights in jail.”

Jeff Clayton, executive director of the American Bail Coalition, said some of these Mother’s Day bailouts are publicity stunts that don’t tackle the larger issue of affordability of bail. It’s unrealistic for organizers to call for a cash-free bail system, he added.

“Not to say these people aren’t doing good work,” Clayton said. “But it’s questionable whether saying they’re an abolitionist and banning all money bail is really the best solution.”

In the past few years, several states have made moves to overhaul their own system including New Jersey, Alaska and New Mexico. There are more than 200 bail reform bills nationwide, according to Baughman. In California, voters next year will decide whether to overturn a law eliminating bail altogether for suspects awaiting trial. Instead, counties would set up their own risk-assessment programs through probation departments.

However, computer algorithms or risk-assessment programs can be biased as well, Baughman said.

Paying for bail has become a growing strategy for local communities to divert the prison pipeline. Last month, rapper T.I. and VH1’s “Love and Hip Hop” personality Scrapp DeLeon joined with an Atlanta church to help post bail for nonviolent offenders for Easter. They exceeded their goal and raised \$120,000. Sixteen men and seven women got to go home.

Follow Terry Tang on Twitter at www.twitter.com/ttang

Cincinnati Edition

WHEN IT COMES TO BAIL REFORM WILL THE TRI-STATE FOLLOW CINCINNATI'S SUIT?

By MICHAEL MONKS • MAY 16, 2019



The City of Cincinnati recently eliminated cash bail for individuals charged with nonviolent misdemeanors.

Ann Thompson / WVXU

The bail system is meant to ensure an individual appears in court after he or she is charged with a crime and to promote public safety. But some research shows requiring cash bail keeps many individuals locked up simply because they can't afford to pay, and that it does not make society safer.



Listen
24:58

There has been a movement across the country to reform the bail system. Efforts in Ohio and Kentucky have yet to move forward, but the City of Cincinnati recently eliminated cash bail for individuals charged with nonviolent misdemeanors.

Joining *Cincinnati Edition* to discuss bail reform are Professor of Law and Associate Dean for Professional Development at [Chase College of Law at Northern Kentucky University](#) Jennifer Kinsley ([@Gatorjenni](#)); practicing attorney and [University of Cincinnati Blue Ash](#) Assistant Professor of Criminal Justice Wendy Calaway ([@wendycalaway](#)); [American Bail Coalition](#) Executive Director Jeff Clayton ([@ambailcoalition](#)); and [Cincinnati Council Member](#) P.G. Sittenfeld ([@PGSittenfeld](#)).

SCRIPPS COLLEGE

Corey Smith
5/8/19
Policy Paper
California Politics

Reforming California's Bail System

In August of 2018, Governor Jerry Brown signed Senate Bill 10, which effectively eliminated the money bail system in California and replaced it with a system that would assess individual's safety and flight risk. This came after two years of prominent organizations like the ACLU calling for bail reform. As he signed SB 10, Governor Brown stated that, "Today, California reforms its bail system so that rich and poor alike are treated fairly"¹. The conversation surrounding the necessity for bail reform has been present for years in California. The current system, prior to the introduction of SB 10, punishes low income individuals and forces them to remain in jail for months, go into debt through a bail bonds company, or plead guilty in order to be released. In contrast, those with the necessary economic resources have the opportunity to simply pay their bail and go home to await trial. In this policy report, I will examine the merits of California implementing SB 10 in addition to its faults and benefits. Additionally, I will argue that the best potential policy solution to the issue of bail in California is to vote out SB 10 in the 2020 election and start fresh with a new policy.

The current system of cash bail in California, and the majority of the United States, is deeply flawed due to its focus on promoting a system in which a defendant's liberty is inherently tied to their personal finances and access to said economic resources, rather than a neutral assessment of their risk to the community or safety. In state courts, defendants who have the

¹ Jazmine Ulloa, "California Gov. Jerry Brown Signs Overhaul of Bail System, Saying Now 'rich and Poor Alike Are Treated Fairly' - Los Angeles Times," accessed May 3, 2019, <https://www.latimes.com/politics/la-pol-ca-brown-signs-bail-reform-20180828-story.html>.

means to afford their bail have the ability to leave jail and await trial in their homes in contrast to low-income defendants, who end up sitting in jail for months or even years awaiting their trial date. The current system is advertised as a necessary means to maintaining public safety. Natasha Minsker, the director of ACLU's Sacramento office has stated that, "upwards of 60 percent of the people in California's jail are awaiting trial or awaiting sentencing, and they're there because they couldn't afford to post bail, So the bail system in California is not working from a justice perspective. And it's not working from a safety perspective. Cash bail is failing at its basic jobs"². Individuals who cannot afford bail are forced to choose between taking a guilty plea or waiting for trial in jail. This debilitating choice can often result in loss of economic opportunities (from losing one's current occupation or the inability to gain future employment), cutting of ties with family members, and the possible loss of custody of their children. According to Jerome Haig (CMC 84'), a criminal defense attorney based in Long Beach, CA, "For a defendant who is choosing between getting out of jail and getting a criminal conviction, they will almost always will chose getting out of jail. This is flawed because those defendants either have to stay in jail to prove their innocence or take a plea deal to be able to go back to their jobs or school"³. The current bail system privileges people with money, allowing them to buy their freedom. Assemblyman Rob Bonta (D-18), said during an NPR interview that, "California has forced people who don't pose a threat to the public and who have not been convicted of a crime to sit in jail and face losing their jobs, their cars, their homes and even their children if they can't afford to buy their freedom"⁴. Haig, who works closely with those in Los Angeles County jails, says that jails are dreadful places to be and understands why one would consider, after spending

² Eric Westervelt, "California's Bail System Is 'Unsafe And Unfair,' Study Finds," NPR.org, accessed April 26, 2019, <https://www.npr.org/2017/10/25/559888442/californias-top-court-abolish-commercial-bail>.

³ Jerome Haig. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

⁴ Westervelt, "California's Bail System Is 'Unsafe And Unfair,' Study Finds."

months in jail without any foreseeable progress in their case, pleading guilty for the sole purpose of being to leave and return home to their family and loved ones. Haig claims that the current bail system is problematic because the presence of criminal history on an individual's record will follow and discomfit future opportunities throughout their whole lives. They "turned the assumption of innocence on its head" said Haig when asked about the use of cash bail in California⁵.

Bail is the money or security that a person who is accused of a crime is required to pay to the court in order to be released from custody. The purpose of bail is predicated on assuring public safety for citizens and guaranteeing the defendant's future appearance in court. In the United States legal system, the judicial system operates under the presumption of a defendant's innocence in conjunction with the right to a trial by one's peers. During an individual's bail hearing, the presiding judge has three options: release the defendant on their own recognizance, choose to deny them bail, or set terms of bail based on a certain amount of money and particular conditions. In *United States v. Salerno* (1987), the Supreme Court determined that pretrial detention may be compulsory for individuals charged with certain felonies only when the government establishes, by substantial evidence, that no release conditions will assure safety of the community and the individual. Currently, bail bonds are advertised as a means to maintain public safety. In California, the vast majority of defendants who are released on bail rely on commercial bail bonds to secure their release. By keeping certain "unwanted" individuals and populations incarcerated the current bail system promotes the illusion of a necessary policy as a mean to keep society safe. In actuality, it is a system focused on promoting a revolving scheme in which those in the bottom of the socioeconomic pyramid must pay massive amounts of money

⁵ Jerome Haig. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

to grasp onto their freedom while the wealthier individuals can simply write a check, post their own bail, and walk free without much consideration.

The current bail system in California is failing at its basic duties. As of August 29, 2018, according to Bob Egelko's San Francisco Chronicle article, entitled "Gov. Jerry Brown Signs Bill Eliminating California's Cash-Bail System", there are more than 48,000 county jail inmates in California and two thirds of the incarcerated population have yet been convicted of a crime⁶. These individuals are held because they or their loved ones are unable to post bail. This is a tragic and infuriating glimpse into the major fault in the cash-bail system in not only California, but the United States as a whole. Policies that have been aimed at fixing the bail system continue to miss the mark. California needs a radical new approach to bail reform that examines the system with a de-carceration lens. Future goals for anyone proposing bail reform policies must include alternatives to risk assessment tools; many of which appear to be racially biased against persons of color. Proposed policies should be aimed at decreasing overall incarceration rates rather than assuming that repairing this system can be solved by a single-issue measure like the elimination of cash bail. Instead, bail reform proposals should consider the best alternatives to cash bail by engaging with community members and bail reform organizations, like CURB, intimately working with those effected.

SB 10 was introduced to the floor in December of 2016 and signed into law by Governor Jerry Brown on August 28, 2018. SB 10, which was co-authored by both Senator Bob Hertzberg (D-Van Nuys) and Assembly member Rob Bonta (D-Oakland), garnered the bare minimum of political support to pass the California State Assembly by a vote of 41-27. In a press conference after the bill signing in August 2018, Senator Hertzberg said that, "currently, we have a system

⁶ Bob Egelko, "Gov. Jerry Brown Signs Bill Eliminating California's Cash-Bail System," SFGate, August 29, 2018, <https://www.sfgate.com/crime/article/Gov-Jerry-Brown-signs-bill-eliminating-13188659.php>.

that punishes people and takes away their liberty, simply because they have less money. That's not fair, and it's not protecting public safety. The point of [SB 10] is to treat people as people, and to consider their public safety risk and their flight risk on an individual basis"⁷. SB 10 is intended to eliminate cash bail and move towards a system that values community safety over wealth. Under this new law, defendants would be held only if they pose a significant threat to public safety. A judge would then rely on algorithms and particular pieces of information to determine the non-monetary release conditions assigned to the defendant, such as GPS trackers, home detention, or other methods. SB 10 would broaden the use of preventative detention, allowing judges more discretion about which defendants they wish to remain in jail until trial. SB 10 also expands the power of law enforcement by creating a system of pretrial release, institutionalizing the application of probation like conditions like electronic surveillance, mandatory drug testing, curfews, and reporting requirements; all *prior* to someone actually being convicted of a crime. For individuals accused of nonviolent misdemeanors, like petty theft or vandalism, they would be released within 12 hours after being booked. However, exceptions will be made for those with recent felony convictions, multiple failures to appear, or allegations involving domestic violence. For all other cases, the local judges will now decide how to assess defendant's potential risk of fleeing or re-offending through risk assessment tools. SB 10 was revised right before it was signed into law which led to massive desertion of political support from nonprofit groups like the ACLU. Directly after its signing, a campaign was started by the California bail industry, and ultimately succeeded in placing SB 10 on temporarily hold and reintroduced as a ballot measure for California voters to decide during the 2020 elections. To

⁷ Bob Hertzberg, "BAIL REFORM: SB 10," Senator Robert M. Hertzberg, December 5, 2016, <https://sd18.senate.ca.gov/bail-reform>.

better examine and propose future policy recommendations for a revised cash-bail system in California, one must examine how previous attempts to rework cash-bail systems have fared.

The discussions surrounding and the attempt to fully implement SB 10 without its current changes has been a huge step in the right direction. However, like any piece of legislation, there are problems and issues within SB 10 that must be addressed. This report will examine three proposals surrounding the future of SB 10: keep SB 10 in its current form, remove SB 10 entirely, and replace the cash bail system with a new policy instead.

The abolition of cash bail in California would be a revolutionary step for corrections reform. As supporters weigh in their goals of the repeal of SB 10, it is essential to think about the potential consequences to California if SB 10 was to be voted out. If SB 10 is repealed, the broken cash bail system will remain. Senator Hertzberg introduced SB 10 almost two years ago and has been working with other lawmakers to create and shape a comprehensive and bold policy proposal. If this policy, dubbed a “bad policy”, took two years to make it into law, then a good policy that meets the goals previously mentioned in this report, might take even longer. This would allow for the continuation of the plethora of issues regarding the California bail system to remain as lawmakers tried to create new policies. The lawmakers involved in the creation of SB 10 stand by their bill, insisting that the prospect of ending cash bail far outweighs raised concerns about the system⁸. Instead of entirely removing of SB 10, lawmakers could pass additional laws to mitigate potential unintended consequences of the bill. Jerome Haig, a prominent Los Angeles defense attorney, has said he believes that SB 10 needs additional policies to make it truly fix the problem. Haig has said that, “getting rid of cash bail is great.

⁸ Melody Gutierrez, “Bill to End Cash Bail Passes California Assembly amid Heavy Opposition - SFChronicle.Com,” August 21, 2018, <https://www.sfchronicle.com/crime/article/California-legislation-to-end-cash-bail-loses-13169991.php>.

Nothing is perfect, but you can make incremental changes on top of those if you have the right policy makers”⁹. On April 25th, 2019, Senators Hertzberg (D-Van Nuys) and Mitchell (D-Los Angeles) introduced SB 36, which passed on the floor with a resounding 37-0 vote. SB 36 establishes particular guidelines regarding the use of risk assessment tools such as data collection, transparency requirements, and regular audits of these tools. In Senator Hertzberg’s press release, Hertzberg states that, “pretrial release[s] without money bail is a key advance, but there is a lot of work to do to ensure that new systems of evaluation for release or detention are not racially biased in their application”¹⁰. This kind of legislation makes the proposal to keep SB 10 in its original state a more feasible policy option. The introduction of additional laws specifically crafted to satisfy bail reform advocates about the stability of SB 10’s political future would hopefully persuade more voters to keep SB 10 in 2020.

The most prevalent movement regarding SB 10 is the proposal to repeal it in its entirety. Currently, SB 10 fails to address the larger symptoms of the prison system of which cash bail is one. Ivette Alé, a Statewide Co-Coordinator for Californians United for a Responsible Budget (CURB), said that SB 10 was a “single policy issue win”¹¹. Alé insisted that supporters of SB 10 were focusing on the elimination of money bail and not the larger system of de-carceration, calling the policy “fake bail reform”¹². Based on Alé’s comments, this policy attempted alleviating a singular symptom while ignoring the underlying problems of a broken system. SB 10 relies heavily on preventative detention, which undermines the presumption of innocence, a corner stone of the United States legal system. Under preventative dentation guidelines,

⁹ Jerome Haig. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

¹⁰ Bob Hertzberg, “Hertzberg Bill to Regulate Pretrial Risk Assessment Tools Clears Senate,” Senator Robert M. Hertzberg, April 25, 2019, <https://sd18.senate.ca.gov/news/4252019-hertzberg-bill-regulate-pretrial-risk-assessment-tools-clears-senate>.

¹¹ Ivette Alé. Interviewed by Corey Smith. Phone Interview. April 12, 2019.

¹² Alé, interview.

individuals who have not been convicted of a crime can stay in jail for up to 30 days on a misdemeanor and 90 days on a felony leaving them unable to exercise their Sixth Amendment right to trial¹³. Additionally, there are concerns about the heavy reliance on Algorithmic Risk Assessment Instruments (RAI). Ivette Alé asserts that, “jailing people based on algorithmic-based assessments of their future behavior is just as bad as jailing people because they can’t afford bail”¹⁴. This RAI data could lead to increased instances of racial profiling and class bias cloaked in the veil of unbiased data collection. RAIs function by inputting various factors regarding the accused, like home zip code, gender, and arrest records to assess an individual’s perceived risk. “The policy makers got so entrenched in the idea that they had to end money bail, that they did not think of a good solution” said Jeff Clayton, Executive Director of the American Bail Coalition when asked about SB 10¹⁵. This policy is a far cry from legitimate bail reform proclaimed by lawmakers when first designing SB 10. Instead, the replacement of money bail with a pretrial detention system is likely to lead towards more individuals incarcerated and fewer opportunities to exit jail before trial. This proposed system “gives tremendous discretion to judges to decide who to detain, and experience shows that this discretion is likely to be used in a way that over-predicts dangerousness and in a racially discriminatory manner,” said Erwin Chemerinsky, Dean at the UC Berkeley School of Law¹⁶. The discussions surrounding bail reform should not be focused on a binary choice between cash bail and preventative detention policies. Both of these proposals do not accomplish the goals sought by the original legislators of SB 10. This proposed expansion of preventative detention creates renewed pressure on the

¹³ Jasmine Tyler and John Raphing, “Human Rights Watch Opposes California Senate Bill 10, The California Bail Reform Act,” Human Rights Watch, August 14, 2018, <https://www.hrw.org/news/2018/08/14/human-rights-watch-opposes-california-senate-bill-10-california-bail-reform-act>.

¹⁴ Alé, interview.

¹⁵ Jeff Clayton. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

¹⁶ Gutierrez, “Bill to End Cash Bail Passes California Assembly amid Heavy Opposition ” sfchronicle.com

defendant to plead guilty to the charges they are facing, regardless of actual guilt. Furthermore, the unnecessary increase in future incarceration rates caused by SB 10 will cost the public tremendous amounts of money, diverting tax dollars to courts and probation departments and away from indefensible social programs, such as housing, schools and social services, which improve the lives of people in their respective communities¹⁷. Certain in-depth cost analyses have concluded that, “the state would have to spend “hundreds of millions of dollars” to reimburse counties for establishing and administering the new pretrial services. The state would also face ongoing expenses in the tens to hundreds of millions of dollars to pay court-appointed lawyers for defendants”¹⁸. SB 10 is not only a bad policy in terms of its ability to mend the issues of bail, but also in its failure to be cost effective.

After Jerry Brown signed SB 10 into law in the fall of 2018, the bail bonds industry began to spearhead a referendum. A coalition calling themselves Californians Against the Reckless Bail Scheme (CARBS), sponsored by the American Bail Coalition (ABC), began to collect signatures all over the state. CARBS was given 90 days from the date they began organizing to collect the required 365,880 valid signatures from registered voters throughout California. If they are able to gain those signatures, the measure would then appear before the voters in November of 2020 as a ballot initiative. On their fact sheet, CARBS call SB 10 “a bad law that threatens justice and public safety”¹⁹. They insist that SB 10, endangers public safety and discriminates against low income and non-white individuals. Jeff Clayton, the Executive

¹⁷ Jeff Adachi, “Proposed Money Bail Bill Will Set Back Reform Effort,” SF Chronicle, op-ed section, accessed April 29, 2019, https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=favorite%3ASFC%21San%2Bfrancisco%2BChronicle%2BHistorical%2Band%2BCurrent&sort=YMD_date%3AD&fld-base=0=alltext&maxresults=20&val-base=0=SB10&docref=news/16DCFE7B17F9C1A0.

¹⁸ Jazmine Ulloa, “Some Say California’s Bail System Is Broken. Here’s How Two Legislators Plan to Help Fix It,” Los Angeles Times (Online); Los Angeles, June 13, 2017, <http://search.proquest.com/latimes/docview/1908805073/abstract/D4A9A05530CA48A6PQ/1>.

¹⁹ “Stop SB 10,” accessed May 3, 2019, <https://www.stopSB10.org/>.

Director of the American Bail Coalition argued that, “SB 10 does not do anything but buy time (for lawmakers)”²⁰. However, the bail bonds industry is not alone in its opposition to SB 10. The repeal movement around SB 10 has brought together individuals and groups from all sides of the political spectrum to agree on one thing: SB 10 is bad policy and needs to be removed.

Many progressive organizations, like the ACLU, first supported SB 10, but after law makers rewrote many parts of it, they pulled their political support for the bill. In its original form, SB 10’s stated intent was an attempt to safely reduce the number of people detained pretrial, while addressing racial and economic disparities within the pretrial system (Section 2 of SB 10, as amended September 6, 2017)²¹. This earlier iteration of SB 10 would not have completely eliminated pretrial imprisonment but would have taken steps towards reducing the number of people held in jail prior to trial by creating a restricted standard for allowing pretrial detention. The rewritten bill says only that its intent is to, “permit preventive detention of pretrial defendants”²². This version of SB 10 merely replaces one form of pretrial imprisonment with another by enhancing judge’s discretion to detain defendants for extended periods of time, providing additional funding for probation departments to expanded surveillance methods and personnel, and requiring the use of algorithm-based risk assessments to be integrated into future decisions surrounding cash bail. These revisions tell local courts to construct their own evaluation system for determining who can be safely released while awaiting trial or sentencing²³. The new version of SB 10 would eliminate the profit motive behind the bail industry without aiming to commit to reducing the numbers of people detained during pretrial in

²⁰ Jeff Clayton. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

²¹ Bob Hertzberg, “SB-10 Pretrial Release or Detention: Pretrial Services: Bill Analysis,” California Legislative Information, 10, accessed May 1, 2019, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB 10.

²² Hertzberg, 10.

²³ Gutierrez, “Bill to End Cash Bail Passes California Assembly amid Heavy Opposition - SFChronicle.Com.”

California's jails. Given the changes in expanding judicial power alongside the implementation of risk assessment tools, it is widely anticipated that the rewritten SB 10 would incarcerate more people pretrial.

Californians for a Responsible Budget put out a statement to the public saying, "we urge you to pull SB 10, and consider an alternative vision for bail reform in California that centers the voices of the community, not the will of judges and law enforcement"²⁴. In addition, Human Rights Watch also put out a statement condemning risk assessment tools and preventative detention²⁵. The referendum effort well surpassed the required number of signatures to push the law towards a voter-based ballot initiative. On January 16th of 2019, the bail coalition was successful in putting the law on hold until the 2020 election. It is now up to the California voters to decide whether to keep and implement SB 10 and get rid of the law entirely.

There are various costs and benefits to getting rid of SB 10. If SB 10 was to be voted out in 2020, California would immediately revert back to its old cash bail system. Discussions surrounding SB 10 began in 2016; it took two years to get it onto the floor and voted into law. If SB 10 was to be voted down through a ballot initiative, it could be years until the next law regarding bail reform manages to make its way through the California State Assembly. California voters need to consider what they care about more: eliminating cash bail immediately or focusing on legitimate bail reform aimed at fixing the system of incarceration that has perpetuated institutional biases and disproportionately affected persons of color. Instead of getting rid of SB 10 in its entirety, the more cost-effective and practical route to ensure that the goals of bail reform are met is to instead pass further pieces of legislation to regulate SB 10 and the

²⁴ Ivette Alé, "Californians United for a Responsible Budget, Letter of Opposition," August 17, 2018, <http://www.curbprisonspending.org/wp-content/uploads/2018/08/SB10-CURB-Letter-of-Opposition.pdf>.

²⁵ Tyler and Raphing, "Human Rights Watch Opposes California Senate Bill 10, The California Bail Reform Act."

algorithms proposed within SB 36. An example of this might look similar to SB 36 and its guidelines regarding the utilization of its proposed risk assessment tools. By adding additional laws to the bail reform docket, lawmakers could more effectively change the issues pertaining to racism and classism institutionalized within the current system. Individuals like Senator Hertzberg, and organizations such as the Service Employees International Union, continue to support SB 10 in its current form. They have stood by SB 10 through its faults because of its ability to end cash bail in its entirety. Tia Orr, Director of Government Relations for SEIU California said in an interview with The Marshall Project that, “we got into this because we wanted to eliminate the cash bail system, for us to be the first state in the nation to do this was something we couldn’t walk away from”²⁶.

In contrast, now that a precedent has been set regarding the goals of the legislature to reform the bail system, it is possible that the next push towards bail reform might arrive sooner than the two years it previously took to negotiate, write, and pass a bail reform bill like SB 10. As many advocates on both sides have said, SB 10 is bad policy. It was rushed and rewritten, leading to a number of faults within the policy itself. In its current form, SB 10 would increase preventative detention, further affecting communities targeted by years of unjust policing practices, biased sentencing, and lead to greater issues of economic inequality regarding the neutrality of potential defendants. Jeff Adachi, the public defender in San Francisco, wrote in an Op-Ed for the SF Chronicle, that by “locking the vast majority of people up before trial, SB 10 would effectively do away with a bedrock principle of our criminal justice system: that you are innocent until proven guilty”²⁷. SB 10 leaves California residents with a less accountable and

²⁶ Abbie Vansickle, “California Just Abolished Bail. Why Are Proponents So Unhappy?,” The Marshall Project, August 30, 2018, <https://www.themarshallproject.org/2018/08/30/so-much-for-the-great-california-bail-celebration>.

²⁷ Adachi, “Proposed Money Bail Bill Will Set Back Reform Effort.”

equally detrimental jailing mechanism. Although the money bail system should end because of its inherent bias towards persons of color and low-income individuals, the proposed solutions within SB 10 do little to resolve the issues at the heart of the issue of bail reform. SB 10 should be voted out and a new policy should be crafted that more successfully alleviates the issues classically associated with bail.

The political debate surrounding the issue of bail reform is full-bodied on both sides. In interviews with Ivette Alé, a representative from Californians United for a Responsible Budget, and with Jeff Clayton, the Executive Director of the ABC, the term “shady politics” was mentioned many times. The bill was posted for comments Friday, August 24th and voted in on Monday, August 27th, leaving many of stakeholders unable to thoroughly read it and provide comments. Clayton insisted that, “SB 10 is the perfect example of last-minute deal making by the governor, the Legislature and labor unions with an absence of input from all stakeholders”²⁸. While bail bondsmen are portrayed as villains within the popular consciousness by various forms of media, lawmakers behind the scenes quietly eroded the bill’s substance. Truth Out, a nonprofit news site, wrote in August of 2018, that, “the story of SB 10 is a familiar one of policy reform gone haywire, with politicians manipulating community interests towards political gain in a final gut-and-amend maneuver”²⁹. The main public stakeholders in the fight against SB 10 are the bail industry and nonprofit social justice organizations. Understandably, the bail industry would like to see SB 10 destroyed due to its ability to effectively end their industry. The California Bail Associations have aggressively fought the bill since its inception in 2016. When SB 10 passed, Clayton was shocked, exclaiming that, “I never thought a preventative detention bill would pass in California, I was stunned and could not believe it”³⁰. In response to the passage of SB 10, the bail bonds industry

²⁸ Jeff Clayton. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

²⁹ Lily Fahsi-Haskell, “The Problem With Bail Isn’t the Bondsmen, It’s the State,” Truthout, accessed April 27, 2019, <https://truthout.org/articles/the-problem-with-bail-isnt-the-bondsmen-its-the-state/>.

³⁰ Jeff Clayton. Interviewed by Corey Smith. Phone Interview. April 22, 2019.

raised thousands of dollars to fight the law through the initiative process. Jerome Haig has emphasized that “without [the bail bond industry’s] financial contributions to[wards] the overturning of SB 10, the issue would not have gotten this far”³¹. Haig found the bail bonds industry’s platform to be “complete bullshit”, saying that “The bail bonds industry is hiding behind public safety as a means to appeal to a broader audience”³². Additionally, the bail bonds industry has numerous allies in California, such as the California Peace Officers Association and probation officers. The fight surrounding bail reform appears to be more about financial issues and the bail bonds industry maintaining the status quo they have become so accustomed to rather than the individuals directly affected by an inability to pay their bail.

In 2015, New York City unveiled an ambitious policy to eliminate the cash bail system for New Yorkers charged with low-level, nonviolent crimes. New York City implemented reforms to their “pretrial-services system”. Under the pretrial-services system, released defendants are directed to a city or county agency that imposes conditions for their freedom³³. Failure to meet these conditions can lead to reincarceration. Faults begin to arise within the pretrial-services model because these conditions are often identical and worse than the sentence one might receive in a guilty plea. Unlike the California model, the New York model steers clear of the use of tracking devices like ankle bracelets or mandatory drug testing. California policymakers can learn from the New York policy and see what aspects could be helpful in future policies regarding bail reform. For example, California could adopt the model of sending people to social agencies after arrest but instead of imposing conditions for freedom, agencies could create safety plans with individuals to guarantee their return to court.

³¹ Jerome Haig. Interviewed by Corey Smith. Phone interview. April 22, 2019.

³² Haig, interview.

³³ Robin Steinberg and David Feige, “The Problem with NYC’s Bail Reform,” The Marshall Project, July 9, 2015, <https://www.themarshallproject.org/2015/07/09/the-problem-with-nyc-s-bail-reform>.

If SB 10 is vetoed in the 2020 election, legislators must work to create a new policy aimed at fixing the bail system in California. Bail reform policy has many avenues in which it could begin to repair the issues of the criminalization of poverty and mass incarceration in California. The failure to return to court by a predetermined date, the central issue that bail attempts to solve, is a smaller issue when comparing it to the severe consequences of being held on bail without any set end in sight. The system itself is profoundly broken and needs radical reforms if policymakers want it to transform into a more equitable system. Although SB 10 took the first tentative steps towards reform by proposing the elimination of cash bail, it does not succeed in meeting the goals it originally set out to repair. The solution to the issues associated with bail cannot be boiled down to just the elimination of cash bail. Instead, policy makers must create a new universal policy that considers an alternative vision for bail reform in California that centers on voices of community members as opposed to the will of law enforcement and judges. Jerome Haig suggested that new policies should look to encouraging local judges to take an individualistic approach to the bail system rather than basing risk assessments on algorithms for a multitude of future defendants³⁴. Efforts to create new policy must include investments in alternatives to incarceration that are not solely reliant on probation and surveillance. In addition, future bail reform policies should supply a list of alternatives to risk assessment tools and preventative detention. The focus of future policies should be rooted in connecting defendants to social services, mental health care, or substance abuse support. An example of a potential solution is a policy that Los Angeles County has attempted: diversion. This diversion policy works to direct individuals away from the criminal justice system and instead, into services that address the root causes that may have led them there. This kind of policy has the potential to

³⁴ Haig, interview.

keep more people out of jail. These reforms should focus on methods to replace community surveillance policies and law enforcement controls rather than keep insisting that they be viewed as replacements to the traditional bail process

Lawmakers should work to create policies aimed at alleviating the symptoms of the mass incarceration system as a whole, in addition to reforming California's bail system. The original bill of SB 10 might have satisfied some of these initial goals, but it was gutted to take away power from the community and instead hand the entire process over to probation officers and judges. California should not put any more of its economic resources towards new building jails. Instead, Governor Gavin Newsom should begin to direct funds towards proper mental health treatment centers and substance abuse counseling. There is extensive work that needs be done within California's the criminal justice system. Incarceration is not a single policy issue. Rather, it is a largely encompassing policy issue that deserves numerous new policies, both discussions and legislation aimed at fixing a system which disproportionately incarcerates black and brown men, mentally ill individuals, and the homeless.

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Bail Reform's Surge Puts New Spin On Old Fears Of Bias

By Diana Novak Jones | June 2, 2019, 8:02 PM EDT

There's a seismic shift afoot in how courts decide to release or detain those facing criminal charges before trial. To gauge just how fast that change is occurring, it's worth looking back at 2013 TED Talk from a onetime prosecutor.

Anne Milgram was a few years removed from serving as New Jersey's attorney general and then leading criminal justice projects at the Arnold Foundation when she gave that talk about using data to assess the risk to the public of releasing someone who is arrested and whether they will return to court.

The old method, where a judge sets a cash bail amount based on the charges, was keeping too many low-risk offenders locked up and freeing too many dangerous ones, Milgram said.

The foundation, now known as Arnold Ventures, handles philanthropy for billionaire investor John Arnold and his family. It was in the process of launching a new tool it had developed that would allow judges to use certain risk factors to calculate a score that would guide them in deciding whether to let someone go, a tool Milgram said was being tested at that moment in a few initial jurisdictions.

By the middle of last year, the Arnold risk assessment tool, known as the Public Safety Assessment, was in use in 40 different jurisdictions, according to a foundation spokesman. And in July, the foundation announced they were making it available to anyone who wanted it, as more than 600 jurisdictions had expressed interest.

There's a boom underway in such risk assessment tools or algorithms, fueled by the concerns that cash bail unfairly penalizes the poor and minorities and contributes to prison overcrowding.

“States are looking at full-on reforming the entire system.”



AMBER WIDGERY
National Conference of State
Legislatures' Criminal Justice
Program

The tools allow judges and pretrial staff to use characteristics like criminal history to score an arrestee's risk of skipping court or committing another crime. The judge then uses the score at an initial hearing to make a decision on whether or not to release them.

But bail reform advocates are divided over whether the tools represent an improvement or an entrenchment of the problems that plagued cash bail. They rely on data from a criminal justice system that is racially biased, so they could perpetuate those inequalities, some advocates say.

The dispute is disheartening because everyone wants the same thing, according to Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, which works with court systems to develop pretrial best practices to drop incarceration rates.

"We need to get more equitable results," Burdeen said.

The PSA, as the Arnold tool is known, isn't the only risk assessment tool in use in the country's courts, and it is not the first. A tool called COMPAS, distributed by private software company Equivant, also offers a pretrial risk assessment, and many states and local jurisdictions have developed their own tools to serve a similar purpose.

Those tools are catching on amid a renewed interest about what happens to defendants before trial, particularly as local governments struggle with jail overcrowding, experts say. Legislation dealing with pretrial systems has been increasing since at least 2012, according to Amber Widgery, a senior policy specialist in the National Conference of State Legislatures' Criminal Justice Program.

"States are looking at full-on reforming the entire system," Widgery said.

But while risk assessments are becoming the new go-to for municipalities across the country, groups that have been aligned in opposition to cash bail are taking dramatically different stances.

Many groups opposed to the spread of risk assessment tools, including the [American Civil Liberties Union](#), the [NAACP](#), the Amistad Law Project and more than 100 others, signed on to a lengthy statement of concern regarding risk assessment tools last summer.

While jurisdictions should be working towards ending cash bail, using algorithms risks the codification of racial biases because they rely on conviction and criminal history data that comes out of a judicial system that disproportionately arrests and charges people of color, the letter said.

"They run the risk of recreating precisely the kind of ... inequalities we are fighting so hard to finally end," said Robin Steinberg, CEO of The Bail Project, a national group that pays bail for people who cannot afford it.

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ROBIN STEINBERG
The Bail Project

Burdeen and the Pretrial Justice Institute, on the other hand, say the risk assessment tools that are already in use have been part of reform packages that have led to more releases.

Burdeen points to Washington, D.C.'s pretrial system, which claims to be among the first pretrial services agencies to use a risk assessment tool. More than 90% of arrestees are released, and nearly 90% of those released make their court dates, according to the agency.

But Burdeen is careful to note that not all risk assessment tools are the same. The best ones only consider very specific factors related to criminal history, according to Burdeen. Any other details — things like employment and mental health — lead to differences in the scores, she said.

Even within the ACLU, different affiliates have taken different stances.

For example, the ACLU affiliate in New Jersey, which implemented sweeping pretrial reforms and brought in the Arnold tool in 2017, said concerns about the bias inherent in the data the tool uses are valid and it is monitoring the tool's impact. But the group also lauded the changes the tool and other reforms brought about, saying the resulting 20 percent drop in the number of people being held ahead of trial was "dramatic."

Criminal justice reformers that have pushed back against legislation implementing the tools have actually found themselves on the same side as a longtime foe — the bail industry.

Both the ACLU and the American Bail Coalition, a trade association of surety insurance companies that underwrite bail bondsmen, opposed California's Senate Bill 10, which would entirely replace cash bail with risk assessment tools. The law was set to take effect this year, but bail industry organizations last fall secured enough signatures to put the issue on a statewide referendum in November 2020.

While they are outspoken against California's bill, the ACLU can't admit they benefited from anything the bail industry has done to fight it, according to Jeff Clayton, the bail coalition's executive director.

"By and large, it was the bail industry that put it on the ballot. We put the money up and got it done," Clayton said.

The advocacy groups aren't the only ones who have been vocal about the tools' spread. The Arnold Foundation has found itself the target of at least one lawsuit over someone released after their score was calculated.

June Rodgers sued the Arnold Foundation and Anne Milgram in New Jersey federal court in July 2017 after her son Christian was allegedly shot by a convicted felon who had been arrested a few days earlier but was released after his PSA score was tallied.

"While reducing jail populations is a noble goal, this case underscores that sometimes pretrial detention keeps us all safe," Rodgers said in the suit, which is still pending in New Jersey federal court.

Now that many states have enacted legislation putting the tools in place, some are passing new laws to try to regulate their use.

Idaho state Rep. Greg Chaney says his state is in the middle of a major population boom, which has led to overflowing jails. Across the state, the vast majority of counties have turned to risk assessment tools to help them limit those waiting for trial behind bars, he said.

But it's not clear what tools are being used where, Chaney said, or if they are being implemented properly.

He co-sponsored a bill that requires all tools in use in the state to be transparent about the factors used to score a defendant. The bill, which became law at the end of March, will give watchdogs more to work with if they want to examine how risk assessments pan out in Idaho, Chaney said.

"The public has a right to know what sort of categories and classifications are being used," Chaney said.

As more and more jurisdictions consider pretrial reforms, at least some advocates are hoping to find common ground on the way forward.

Finding that common ground could start with a hard look at the experiences of states that have already pursued reforms.

In New Jersey, those who have cheered the state's progress in recent years at dropping the number of people incarcerated ahead of trial are quick to note that change has required more than just replacing cash bail with risk assessment tools.

The state is automatically releasing some people arrested and charged with low-level crimes, advocates note. It has also passed laws putting limits on how long someone can be detained before trial. For those released, the court sends text messages or calls to remind them of court dates.

"New Jersey didn't just drop [in] the PSA," Burdeen said.

Have a story idea for Access to Justice? Reach us at accesstojustice@law360.com.

--Additional reporting by Andrew Strickler. Editing by Katherine Rautenberg.

The public has a right to know what sort of categories and classifications are being used.



IDAHO STATE REP.
GREG CHANEY



CBS NEWS / June 2, 2019

Re-making bail



"Anger got the better of me," said Bill Peyser, who took what was meant to be a noise complaint to another level, when he brought the handgun with him.

Back in April of 2017, he got so frustrated with his loud neighbors, that instead of just knocking on their door, surveillance cameras captured him pointing a handgun at it, and kicking it. Bad enough, but then the gun went off ... accidentally, he said.

"I never should have done anything like that," Payser said. "That's a crazy, dangerous, irresponsible, uncalled-for thing to do. But that's what I did, and I got myself arrested."

No one was hurt, but the retired San Francisco cab driver knew he was in pretty deep trouble. Negligently discharging a firearm was his first thought, but much to his surprise, he found himself charged with *attempted murder* instead.

His bail was set at \$625,000.

Correspondent Lee Cowan asked Peyser, "Was that something you could afford to pay?"

"Not even close!" he laughed.

So, he went to jail – pretrial detention, as it's called. Peyser said, "I thought I'd be there a few days until these people came to their senses and straightened things

out and charged me with what I actually did. What actually happened was, I spent six months in jail for crimes I never committed."

Peyser, who had never been in trouble with the law before, was locked up for one reason: he didn't have enough money to buy his freedom. And he isn't alone. It's estimated at least 60% of the people in jail today haven't been convicted of anything.

Phil Telfeyan, executive director of the non-profit Equal Justice Under Law, said it is estimated there are more than 450,000 people in jail today simply because they can't pay their bail.

"It's unfair, inefficient, and a complete cost to taxpayers, for no public safety benefit," he said. "There's no rationale behind the money bail system."

Equal Justice Under Law is dedicated to scrapping the cash bail system entirely, all across the country. "We're not arguing that everyone has to be released, or everyone should stay in jail," Telfeyan said. "All we're arguing is that wealth status should not be the main criteria for who stays in jail and who's released. That is the opposite of what the framers of the Constitution had in mind when they wrote the Bill of Rights."

In the Constitution, the 14th Amendment guarantees equal protection under the law. But it's the 8th Amendment where bail is mentioned specifically, stating it shall not be "excessive."

Last year, a 22-year-old Detroit man was charged with two misdemeanors after he fired a paintball gun at an unmarked police car. Although he had a clean record, the judge set bail at \$30,000. "But I don't have no money to pay that bail!" he cried.

Robin Steinberg, a retired public defender in the Bronx, has watched the impact of cash bail unravel her clients' lives for years. "The purpose of bail was to allow people to pay it, and then incentivize them to come back to court," she said.

Now, "It has become punishment."

It also incentivizes them to plead guilty, even if they are innocent. "People being held in jail on cash bail will plead guilty 90% of the time so they can go home," Steinberg said.

"And right then, at that moment, they're obviously not thinking about what that means on their record years down the road? They just want to get out of jail?" asked Cowan.

"Oh sure. And I stand there helpless, as a public defender going, 'But you're not guilty.' And the client will say to me, 'I don't care. I need to go home. I need to get back to my children. I need to get back to my family. I need to get back to my job.'"

Private bail bonds companies get people out of jail all the time. It's a \$2 billion-a-year industry in this country. Gloria Mitchell, a second-generation bail bondswoman in Pomona, California, said, "We understand that people just don't have that kind of money sitting around, but bail provides that.

"Of course, we can't do it for free, 'cause we're putting our name to guarantee."

Her fee is generally about 10% of the bail amount. That's money the accused offenders don't get back, even if they're found innocent.

That's what happened to Alex Kundel, after he says he was wrongly accused of attacking a man on a street near his home. "I never assaulted him, never abused him, never put my hand on him," he said.

Nevertheless, Kundel was arrested, and his bail was set at \$150,000.

Not only did he have two dogs to take care of; he was the only caregiver for his ailing grandmother. So, he turned to a bail bondsman to cover the 10% of his bond. It cost him \$15,000.

"I still owe \$8,500," he said. He pays it back in installments, which he expects to be doing for many years.

"All because of an accusation?" Cowan said.

"A false accusation, yes."

In fact, a judge threw out his case shortly after his bond was posted. Had he paid the bail himself, he would have gotten all of it back.

It's stories like this, and worse, that gave Robin Steinberg an idea: Why not step in and pay bail for those who needed it most, and do it at no cost to them?

"The Bail Project is designed to answer that immediate emergency crisis of human beings sitting in jail cells who haven't been convicted of crimes, who are there only because they don't have enough money to pay their bail," she said.

Using philanthropic dollars, she's amassed a pot of money that she can use to bail out one client after another, without losing a cent. "When you pay bail, if somebody makes their court appearances, the bail comes back at the end of the case." The money is then used for another detainee.

So far, that revolving fund has bought the freedom of more than 5,000 people since last year. And 96% of the time, people come back for each and every court appearance. "And understand that those court appearances will sometimes go on not for months, but years," Steinberg said.

One of the people she bailed out, Ramel Edwards, was arrested for riding his bike on a sidewalk. He referred to Steinberg as a hero, "a perfect stranger that just come to help you. ... I didn't have the money to get out and fight my charge from the outside."

All he needed was \$150, 10% of his bail amount. But without it, he sat in jail for *five days*. That time behind bars cost him his job. "So, I'm being punished before I was sentenced," Edwards said.

He tried finding other work, but no one would hire him while his case was winding its way through the legal system. "I had two job offers rescinded because of the charges," he said.

After two years of fighting, the charges against Ramel were dropped.

He was later hired by the Bail Project to go back to that same New York City jail where he had given up hope, to give hope to someone else. "I'm a hero in training!" he said.

Rasha Almulaiki is also working with the Bail Project. Cowan found her outside Detroit's Wayne County Jail, where she had just made bail for Karena Jones' partner, Bryant, who had been locked up for more than a month. He lost his job because he couldn't make bail, and Karena had to quit hers to take care of their four kids.

"I'm so happy we're able to get you out," Almulaiki said.

"Finally, some help from somebody, some help from somebody," said Jones. "I wasn't getting help from anybody."

For those who worry there's a public safety risk to releasing those who are accused but not convicted, Phil Telfeyan says they need look no further than the nation's capital. Washington, D.C. largely did away with its cash bail system back in 1992, and statistics show it has not caused an increase in crime.

"When folks are arrested in Washington, D.C., they're not given a price tag; they're simply told to come back to court," Telfeyan said. "Now in some cases, a judge will decide that someone is too dangerous or too much of a flight risk to come back to court. In Washington, D.C., that's less than 10% of the time."

There are growing efforts to change the system all across the country. Nearly a dozen states have some kind of bail reform legislation already pending. New York just moved one step closer to eliminating cash bail, following [California, which did so last year](#).

It's controversial, and it's being fought tooth-and-nail by the bail bonds industry.

For Gloria Mitchell it would be the end of a family business. "You're talking about 3,000 bail agents just losing their jobs," she said. "But nobody wants to hear that part of it. They just think that we're here for the money."

Any kind of reform, though, is too late for Bill Peyser, who like so many others was punished before he ever saw a day in court.

When that day finally came, he was acquitted on all charges.

"Your connection to your life as you knew it, is broken," he said.

Cowan asked, "And does it stay broken?"

"Yes," Peyser replied. "I will never be the same."



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Guest Columns

NM bail reform needs to be fixed

By Jeff Clayton / Executive Director, American Bail Coalition

Wednesday, July 3rd, 2019 at 12:02am

Nearly four years ago, New Mexico's then-chief justice, Charles Daniels, advocated for a change to the state's Constitution. Pushing for a no-money bail system, he held that jailhouse bond schedules were unconstitutional. Unfortunately, while well-intentioned, his plan was flawed and destined for disaster from the outset.

A colleague and I negotiated directly with Chief Justice Daniels along with legislative leaders on language that appeared in the resulting constitutional amendment. Despite his great desire for the panacea of a no-money bail system, a compromise was eventually reached, with the Legislature wisely refusing to go along with him.

The new hybrid bail system created was actually well-conceived, taking good parts from the no-money bail system, while retaining existing tools available to judges, including offering release from a schedule, setting bail and granting free releases based on a promise to appear.

Unfortunately, the state Supreme Court decided to take matters into its own hands and implemented a broken version of the new system, which completely handcuffed judicial discretion to set appropriate bails.

Without bail as a judicial option, an individual can be kept in jail pending trial only if it can be proven by clear and convincing evidence that he or she is a danger or flight risk. If an algorithm-based risk-assessment tool declares a defendant low risk, there is little chance a prosecutor can prove the need for detention. This is the current situation in New Mexico and occurs repeatedly.

Three things should be done. First, the Legislature should repeal court rules on bail and restore them to what they were before the constitutional amendment passed, then immediately pass legislation implementing them as originally intended. This includes returning to judges the discretion to impose jailhouse bond schedules and set appropriate monetary bails.

Legislation should include expanded funding for preventative detention hearings when DAs seek to deny bail. Also, timelines no longer than 48 hours should be specified, with funding provided to review cases of individuals who have had their bails set by a schedule or judge, but are unable to bail out.

Second, the Legislature should force an audit of the state's courts to determine the true impact of pretrial release. The statistics are undoubtedly dismal – government programs always fail to release negative findings.

Third, it's time for sunshine and transparency on the Arnold Foundation's Pretrial Risk Assessment tool. Last year, Idaho's lawmakers agreed on legislation forcing transparency of the underlying data and math behind the algorithm. Idaho's HB 118 was signed into law earlier this year and was actually endorsed by John Arnold himself. If the builder of the algorithm agrees that the tool should be open and accountable, New Mexico should demand the same.

The no-bail movement that Chief Justice Daniels once spearheaded has become derailed. In vogue only a few years ago, groups of all political stripes across the country have denounced their previous positions. More than 250 organizations and companies, including the ACLU, Google, IBM and NAACP, have come out against the use of pre-trial risk assessments to replace bail.

It is noteworthy that since preventative detention was constitutionally expanded in New Mexico in 2016, no other state has followed its lead. The sheer volume of news stories reporting on the negative effects of bail reform where it has been implemented has been impossible for legislators to ignore.

With properly constructed legislation, New Mexico's bail system can be better than it was before – allowing for detention of those clearly too dangerous to be released, while making certain the indigent don't languish in jail. It should also restore the previous accountability in the system, which was created through monetary conditions of release and by the authority granted to private bail agents to chase down and arrest suspects found to be in violation.

News Tribune

Bondsmen complain about new pre-trial release rules, procedures creating them

July 15th, 2019 | by [Bob Watson](#) | in Local News



Two organizations connected with the bail bonds industry have questioned the Missouri Supreme Court's new rules regarding pre-trial release and the way those rules were proposed.

The rules went into effect July 1 — except for some proposed modifications which won't go into effect until next Jan. 1.

In an email to the News Tribune last week, the American Bail Coalition said the new rules "were conceived and put into effect by the high court in complete secrecy. Not only was the public locked out of the closed-door proceedings, there was neither input nor approval from the state legislature."

Jeff Clayton, the coalition's executive director, said Friday afternoon that the Supreme Court's "rules process is a joke compared to other states."

In one state, which he didn't identify, Clayton said, "All three branches of government appoint who's on the rules committee — ultimately, the Supreme Court makes the final decision."

In a June 14 letter to the Supreme Court, Clayton wrote: "We believe these rules should cease to become law until or unless a full public process is launched in order to study the bail system in Missouri.

"This committee or panel should be inclusive and represent a diversity of opinions and include presentation by national experts."

However, Kansas City defense attorney J.R. Hobbs — one of three people who co-chaired the Supreme Court committee that worked on the new pre-trial releases rules for more than two

years — said in a Friday evening interview: "The Supreme Court, under Article V, could just pass the rules. They don't have to have any input.

"There's no requirement that (they) set a task force up."

Historically, the court has used a number of advisory committees to suggest rules or policy changes for the state's court system.

Missouri's Constitution says the state Supreme Court "may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication."

The Constitution doesn't give the Legislature or the executive branch any role in that rule-making process, although it does say: "Any rule may be annulled or amended in whole or in part by a law (passed by the Legislature and approved by the governor) limited to the purpose."

Creating the new rules

The court's new, pre-trial release rules were several years in the making.

In her Jan. 24, 2017, State of the Judiciary address, then-Chief Justice Patricia Breckenridge told the Legislature: "Our next goal is to improve pretrial incarceration practices.

"Incarcerating persons simply because they are too poor to post bond needs to be examined in both municipal and criminal cases."

She noted the Missouri Constitution allows an individual to be incarcerated before trial "only when charged with a capital offense; when a danger to a crime victim, a witness, or the community; or a flight risk. All other persons are entitled to reasonable conditions of release prior to trial, based on the particular circumstances of their cases."

And Breckenridge announced the creation of a task force to "examine how other states and cities have addressed the problem of unwarranted pretrial incarceration and recommend changes to our practices. We look forward to sharing what we learn with you and working together to enact common-sense reforms."

That 40-member Task Force on Criminal Justice included Missouri Corrections Director Anne Precythe, state Insurance Director Chlora Lindley-Myers, and representatives of judges, prosecutors, public defenders and other defense attorneys, law enforcement officials, academics, and court officials.

After numerous meetings, the task force late last year proposed changes in the court's existing rules, including a mandate that judges considering pre-trial release begin with "non-monetary" conditions for a defendant awaiting a trial on their charges, and courts may impose monetary conditions of release only if necessary — and only in an amount necessary to ensure public safety and the defendant's appearance at court hearings.

The court published the proposed new rules in December, which became effective July 1.

As then-Chief Justice Zel Fischer told the Legislature last January, in his last State of the Judiciary message: "Under the circumstances of each case, a judge must balance two constitutional imperatives — one to afford the accused an opportunity for pretrial release, and the other to insist on 'sufficient sureties' the defendant will appear in court.

"Judges also must balance statutory considerations for protecting a crime victim, a witness and the community from a defendant who poses a danger to them."

However, Clayton told the News Tribune last week, the new rules create an uneven playing field where the previous process, based on setting bonds to allow release from custody during the pre-trial period, was balanced.

"If they want to leave everything on a level playing field, why do they need these (new) rules?" he asked.

Hobbs countered: "When you say a level playing field, is it level for the guy who's unemployed, who is charged with passing a bad check, to set a \$2,500 cash bond?"

"Is that level, when, maybe, a recognizance bond would assure that he appear (in court) and is not a danger (to the community)?"

Jefferson City lawyer Chuck Hatfield represents the Missouri Bail Association, and told Fischer in a June 3 letter the court should make changes before the rules went into effect.

His letter proposed revising the rule "so that trial courts can order monetary bail when it is the least restrictive condition, rather than when non-monetary conditions will not ensure a defendant's appearance."

Hatfield's letter noted the proposed changes "would significantly curtail (judges') discretion by effectively foreclosing trial courts from imposing monetary bail unless there is no combination of non-monetary conditions that will ensure a defendant's release (or community safety)."

However, Hobbs reminded a reporter: "The whole genesis of this, by the way, is because there is ongoing litigation that says that, fundamentally, we expect equal protection under the law for all people in due process, and we need to look at things with a lens of not just rotely setting a money bond."

Risk assessment

In its email last week, the coalition noted: "Rather than setting monetary conditions for release, the court now requires defendants be evaluated by a risk assessment algorithm to determine if they represent a danger to society.

"The risk assessment tool, which is a key component of the rule changes, determines whether or not an individual is 'safe' or 'dangerous.' If the person is deemed 'safe,' they are released for free pending trial. But if the tool concludes they are 'dangerous,' they are kept in jail with no recourse at all.

"The problem is that a growing number of studies across the U.S. show that risk assessment algorithms are flawed."

Hatfield's letter to Fischer on behalf of the Missouri Bail Association asked the court to delete "any reference to such risk assessment tool from the amended rule."

Hobbs said risk assessment has been suggested, but the Supreme Court has not approved its use.

"The risk assessment tool is an algorithm, and there are various models," he said, "and, if one is adopted by the court at some point, after a Missouri validation — even then it's only A factor for the court to consider.

"It's not going to be a system where it's the only factor that goes into whether one gets pre-trial release or bond."

Protecting bail bonds

Clayton acknowledged his group's financial interests in keeping bail bonds available.

"It's not our job to protect the bottom line — it's our job to protect bail as an option, and to allow our customers to use our services when they're the least restrictive form of release to guarantee someone's appearance in court," he explained.

Hobbs said the Missouri rule changes don't shut-out the bail bonding system.

"Unlike in Kentucky, (where) they've outlawed bondsmen, and there's a wholesale attack on cash bonds in some locales — that's not the model that we've proposed, so far, envisions," he said.

"(The Missouri rules change) prioritizes non-monetary conditions first and then, when there is a cash bond, it ought to be tied to someone's individual financial circumstance, not just a rote bond schedule.

"You know, if you're Bill Gates and you have a \$250,000 bond, that might be a lot different than if you're (someone with less money).

"The bond schedules don't do that — they just classify by offense, only."

Clayton said the state's new rules "really put hurdles in place for judges to impose monetary bail."

Hobbs said the new rules mean "you don't just routinely set a money bond. If (the judge) believes there must be a money component, (the rule asks) 'Can we talk about his monetary situation and set something reasonable?'"

The Supreme Court had no reaction to the two bail associations' concerns.



Missouri Supreme Court WORSE Than California Supreme Court!!

July 16, 2019 By Stephen Frank [Leave a Comment](#)

I know this is going to be hard to believe. But, the Missouri Supreme Court makes the California Supreme Court look lazy and conservative. At least when our courts harm the public safety, they do it in public and smirk at us. In Missouri, they do it without input and in back rooms. That is how the Missouri Supreme Court operates—no need for public discussion or testimony.

“Although a number of other states have embraced bail reform to one degree or another, the new rules in Missouri were conceived and put into effect by the high court in complete secrecy. Not only was the public locked out of the closed-door proceedings, there was neither input nor approval from the state legislature. Both Republican and Democratic lawmakers have expressed outrage at the Supreme Court overstepping its bounds in setting public policy for the state.

The rules radically change the way in which persons arrested and charged with a crime in Missouri are handled pending trial. Rather than setting monetary conditions for release, the court now requires defendants be evaluated by a risk assessment algorithm to determine if they represent a danger to society. The underlying assumption with bail reform is that the vast majority of individuals have only been charged with minor misdemeanors and are inherently low-risk.”

Expect the California Supreme Court to learn bad habits from Missouri.



Photo credit: Michael Coghlan via Flickr

[Missouri Supreme Court Makes Law](#)

Jeffrey Clayton, American Bail Coalition, 7/16/19

Although a number of other states have embraced bail reform to one degree or another, the new rules in Missouri were conceived and put into effect by the high court in complete secrecy. Not only was the public locked out of the closed-door proceedings, there was neither input nor approval from the state legislature. Both Republican and Democratic lawmakers have

expressed outrage at the Supreme Court overstepping its bounds in setting public policy for the state.

The rules radically change the way in which persons arrested and charged with a crime in Missouri are handled pending trial. Rather than setting monetary conditions for release, the court now requires defendants be evaluated by a risk assessment algorithm to determine if they represent a danger to society. The underlying assumption with bail reform is that the vast majority of individuals have only been charged with minor misdemeanors and are inherently low-risk.

In an address earlier this year, then-Chief Justice Zel Fischer declared that the rule changes would “ensure those accused of crime are fairly treated according to the law, and not their pocket book.”

However, while the new Missouri rules would seem extremely appealing for civil rights groups eager to put an end to the concept of “buying one’s way out of jail,” the reality is actually quite different. The risk assessment tool, which is a key component of the rule changes, determines whether or not an individual is “safe” or “dangerous.” If the person is deemed “safe,” they are released for free pending trial. But if the tool concludes they are “dangerous,” they are kept in jail with no recourse at all.

The problem is that a growing number of studies across the U.S. show that risk assessment algorithms are flawed. A 2016 ProPublica article entitled, “Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And It’s Biased Against Blacks” concluded that the deck was stacked against African-Americans. Missouri’s new rules mean judges no longer have discretion to make their own determinations on whether or not an individual can be released. The algorithm has the final and only say.

Based on evidence coming in across the nation where risk assessment has been implemented, it is expected that more people will be locked up in Missouri than before the new rules took effect. There has been considerable pushback against the use of risk assessment algorithms, from among others, the majority of Republicans, as well as a large faction of traditionally liberal organizations, including the national ACLU and NAACP, and more than 100 additional members of the Leadership Conference of Civil Rights Organizations.

Missouri lawmakers from both sides of the aisle are expected to fight the new rules, but because they were implemented just before the state legislature adjourned for the year, any changes will have to wait until at least January when it reconvenes.

Bill's News Commentary

Commentary on major news events, mostly centered on U.S., emphasis on less-covered topics

Guest Post: Missouri Supreme Court sidestepped legislature in creating new rules

MISSOURI SUPREME COURT SIDESTEPED LEGISLATURE IN CREATING NEW RULES

By Jeffrey J. Clayton, Executive Director, American Bail Coalition

Bail reform has become a hot topic around the country as legislators have attempted to correct perceived flaws in existing laws in various jurisdictions. While we can debate the merit and necessity of these changes, the one thing most Americans agree on is that the job of making public policy is up to lawmakers, not the courts. That is, our courts are there to uphold the law, not create it. Apparently, the Missouri Supreme Court believes otherwise.



On July 1, Missouri's highest court made a unilateral move, enacting new rules for the purpose of preventing persons arrested and accused of a crime from languishing in jail if they are unable to pay for bail ([news story in The Missouri Times](#)).

The new rules completely alter the manner in which defendants in Missouri are managed while they await their court dates. All but eliminated is the option for cash bail, basically replaced by a system through which individuals are subjected to evaluation from a risk assessment algorithm. Through this means, courts determine if the person poses a threat to society. It is important to note that bail reform universally operates under the assumption that nearly all individuals are considered low-risk, due to the majority being charged with relatively minor misdemeanors.

While other states have either implemented bail reform laws or are otherwise exploring it, most have done so through legislative channels. The problem is that the new rules in Missouri were created and executed by the Supreme Court entirely on its own. Moreover, not only was the state legislature not consulted about a matter that should have been its province, the public itself was not allowed even a glimpse into the proceedings. Everyone except for the seven justices comprising the high court was kept completely in the dark.

The backlash has been keen. In this era of partisan bickering, legislators from both sides of the aisle have joined in castigating the state Supreme Court for usurping its authority through its de facto setting of public policy. Complaints have also surfaced that a portion of the new rules are in violation of Missouri's constitution.

The new bail rules look appealing at first glance, especially to groups and individuals who have long-sought an end to the notion of "wealth-based jail release." But as with most things, reality is seldom as simple as it seems. Remember the risk assessment tool which is supposed to determine whether or not someone is a danger to society — with the underlying presumption that most people are "safe?" It turns out a slew of independent research is now revealing that the very algorithms behind the tools are fundamentally flawed. A [2016 article published in ProPublica](#) was titled, "Machine Bias: There's Software Used Across the Country to Predict Future Criminals. And It's Biased Against Blacks." The piece made the strong argument that African-Americans could not get a fair shake when risk assessment was in use.

Further compounding matters is the fact that if the algorithm determines that a person is "dangerous" — again, far more likely for African-Americans than with whites — they are stuck in jail for the duration. Because cash bail has been eliminated in this scenario, the individual is left with no recourse whatsoever. Also, Missouri's new rules have eliminated the ability of individual judges to exercise their own discretion on a case-by-case basis, as was traditionally the case. This means that the risk assessment tool has the first, last and only word.

Based on statistics from other jurisdictions around the country where bail reform and risk assessment are now in play, it is projected that there will be more individuals in Missouri jails than before the new rules kicked in.

The one "positive" with the Missouri Supreme Court's misguided move is that it has served to unite conservatives, liberals and everyone in between. Loud opposition to the

use of risk assessment algorithms has been heard from most Republicans, plus a wide assortment of left-of-center organizations including the national ACLU and NAACP, and more than 100 additional members of the Leadership Conference of Civil Rights Organizations.

There is a reason why there is a separation of powers between the executive, legislative and judicial branches of government in our country, and it is clear that the high court violated its authority and, in turn, the will of the people of Missouri.

It is notable that the Supreme Court chose July 1 as the date when its new rules were to take effect — after the 2019 legislative session had ended and more than six months before it next convenes. Perhaps the justices were hoping that lawmakers, as well as residents would forget about its regrettable decision to force policy upon the state by that time. Fortunately, both Republican and Democratic legislators have expressed every intention of fighting the new rules come January 2020 — a promise that their constituents should not let them forget.

2020 will also mean another election year and Missourians will have the opportunity to voice their opinion on whether or not they approved of the unilateral actions taken by the seven men and women of the Supreme Court. It's easy for judges to forget they serve the people who have voted them into their positions and apparently that is what has happened here.

We urge the citizens of Missouri and its legislators to hold their Supreme Court justices to the standard to which they are sworn. If they are not up to the task, they should rightly be voted out of office and replaced by those who truly understand the concept of upholding the law.

#

About Jeffrey Clayton, Executive Director of the American Bail Coalition:

Jeff Clayton joined the American Bail Coalition as Policy Director in May 2015. He has worked in various capacities as a public policy and government relations professional for fifteen years, and also as a licensed attorney for the past twelve years. Most recently, he worked as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, a M.S. (Public Policy) from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

[Image](#) from Wikipedia for Missouri Supreme Court in Jefferson City.

<https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say>

Propublica source by Julia Angwin and Jeff Larson, Dec. 30, 2016

Missouri Times article cited by Kaitlyn Schallhorn

Embedded YouTube URL from KORL10 News

Posted Monday, July 29, 2019 at 10 PM EDT

CALIFORNIA ★ POLITICAL
REVIEW

Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns

July 31, 2019 By Stephen Frank [Leave a Comment](#)

This is from a Harvard University study. Leftists around the nation are working hard to allow criminals back on the streets with little incentive to show up for a trial. This is called the NO CASH BAIL movement. Under this, you get arrested, smile at a judge and an algorithm will decide if you go back to a life of crime or stay in jail. Remember the old adage of computers, “garbage in, garbage out”. Will the system be honestly set or biased in favor of the criminals?

“When predicting flight and danger, many tools use inexact and overly broad definitions of those risks. When predicting violence, no tool available today can adequately distinguish one person’s risk of violence from another. Misleading risk labels hide the uncertainty of these high-stakes predictions and can lead judges to overestimate the risk and prevalence of pretrial violence. To generate predictions, risk assessments rely on deeply flawed data, such as historical records of arrests, charges, convictions, and sentences.”

Once again, the Left is working hard to make more victims. Do you expect anything less?



Photo credit: Michael Coghlan via Flickr

Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns

Martha Minow, John Bowers, Jonathan Zittrain, Harvard University, 7/17/19

Prominent researchers from MIT, Harvard, Princeton, NYU, UC Berkeley and Columbia — including Berkman Klein Directors Martha Minow and Jonathan Zittrain — have signed an open statement of concern regarding the use of actuarial risk assessment as a means of lowering pretrial jail populations.

Read the signed statement (PDF)

Actuarial pretrial risk assessments suffer from serious technical flaws that undermine their accuracy, validity, and effectiveness. They do not accurately measure the risks that judges are required by law to consider. When predicting flight and danger, many tools use inexact and overly broad definitions of those risks. When predicting violence, no tool available today can adequately distinguish one person’s risk of violence from another. Misleading risk labels hide the uncertainty of these high-

stakes predictions and can lead judges to overestimate the risk and prevalence of pretrial violence. To generate predictions, risk assessments rely on deeply flawed data, such as historical records of arrests, charges, convictions, and sentences.

This data is neither a reliable nor a neutral measure of underlying criminal activity. Decades of research have shown that, for the same conduct, African-American and Latinx people are more likely to be arrested, prosecuted, convicted and sentenced to harsher punishments than their white counterparts. Risk assessments that incorporate this distorted data will produce distorted results. These problems cannot be resolved with technical fixes. We strongly recommend turning to other reforms.

This statement of concern has been submitted to the following jurisdictions for consideration:

[California.pdf \(PDF\)](#)

[Los Angeles.pdf \(PDF\)](#)

Algorithm anxiety: Critics question use of risk-assessment tool to set bond for defendants

By: Nicholas Phillips | August 5, 2019

Among 34 pages of revisions to Missouri's bond rules that took effect July 1, the phrase that has caused a stir is only 14 words long.

It appears at the end of a list of factors that judges "shall take into account" when deciding whether to detain or release a criminal defendant pretrial. The final factor judges must consider: "a validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri."

Such a tool is, in essence, an algorithm (or digital process) that receives a defendant's information and then forecasts his or her compliance with conditions of release by referring to a database of the outcomes of similar defendants in the past.

Currently, St. Louis County is developing a tool of this kind that is modeled on the Public Safety Assessment, or PSA, developed by the Laura and John Arnold Foundation, according to circuit court spokeswoman Christine Bertelson. That philanthropic organization claims that the PSA, which already is in use of dozens of locations nationwide, draws on data from 750,000 cases in nearly 300 jurisdictions. It isolates for judges nine factors that can predict a defendant's pretrial risk of failure to appear, new criminal activity and new violent criminal activity.

Bertelson said the PSA-style tool will be customized to its needs and should be finalized this summer, with training to begin in October.

But the mere prospect of these tools being deployed in Missouri has drawn criticism from outside the state.

"We expect to request all judges and pretrial services programs to cease and desist in their use of such tools," said Jeffrey Clayton, executive director of the American Bail Coalition, a national trade association for insurance companies that underwrite bail bonds. Clayton wrote in a statement that these digital tools should not infringe on the right to cash bail, which "creates a check on the government's power yet allows judges to achieve a delicate balance" in considering the rights of the various parties involved.

Another criticism came on July 17, when more than two dozen researchers from MIT, Harvard, Princeton, NYU and the University of California, Berkeley released a signed, four-page statement saying that pretrial risk-assessment tools are based on distorted data, false assumptions and "technical flaws" that raise "grave concerns." Three of the researchers sent their statement directly to the Missouri Supreme Court.

"Pretrial risk assessments do not increase the likelihood of better pretrial outcomes, much less guarantee them," the researchers wrote in an introductory letter to the high court. "The technical problems cannot readily be resolved — indeed, they are as much problems of theory as of implementation."

These concerns may be premature: Despite the mandate that judges take it into account, no pretrial assessment tool has yet been validated or approved by the high court, according to Kansas City defense attorney J.R. Hobbs, one of three co-chairs of the Missouri Supreme Court's Task Force on Criminal Justice. That body met during a period of two years and recommended a broad set of changes to the state's bond rules, many of which were adopted by the high court in December and put into effect on July 1, with modifications to follow in January.

Hobbs added that the tool is “only one factor a judge will look at.” The other factors listed in the rules include the defendant’s family ties, employment, financial resources and mental condition; the nature of the charge; the weight of the evidence against the defendant; the defendant’s criminal record and record of appearance at other court proceedings; and whether he or she was on probation or release at the time the offense occurred.

Beth Huebner, a criminal justice professor at the University of Missouri-St. Louis who has been involved in efforts to reduce St. Louis County’s jail population, said the PSA-style tool could be an improvement, but its effectiveness depends on the quality of the data inputs and the training that judges receive.

“If you adopt the tool without any training or investment, things will not change,” Huebner said.

According to the Arnold Foundation, the PSA bases its forecasts on nine factors such as a defendant’s age, offense, prior convictions, prior sentence and prior failures to appear. “The PSA does not rely on factors such as race, ethnicity or geography,” the website states.

Yet the university researchers who criticized PSA-type tools claim that racial bias is baked into the algorithms because they rely on historical arrest-record data, which is not “neutral.”

The researchers argue that arrest records are, on the one hand, under-inclusive because most crimes don’t result in arrest, and on the other hand, they’re over-inclusive because “decades of research have shown that, for the same conduct, African American and Latinx people are more likely to be arrested, prosecuted, convicted and sentenced to harsher punishments than their white counterparts.”

Johnson County Prosecuting Attorney Robert Russell, who sat on the task force subcommittee that weighed introducing the tool into the new bond rules, said he and his colleagues had heard such criticisms during their deliberations.

“I think [the researcher critics] suffered from the perception that we were somehow endorsing the risk-assessment tool at the expense of all other considerations, and that’s simply not true,” Russell said. Judges aren’t bound to its suggestions, he emphasized, and he doesn’t believe judges will start defaulting to them, either.

Russell said that after hearing from a variety of entities, including academics and representatives of other jurisdictions that had implemented the PSA, he and his colleagues recommended that the high court consider approving that tool — but approval won’t happen overnight. The pilot project must train court officers and employees, set up the data infrastructure, then measure outcomes to verify, for example, whether defendants who are released on expectations of compliance do, in fact, comply. Once it’s validated, the Supreme Court must also sign off.

Predicted Russell: “I think we’re probably still several years off from that actually occurring.”

Courthouse News Service



Bail Industry Mounts Two-Pronged Attack to Revive Money Bail in California

MARIA DINZEO
August 9, 2019

(CN) – Facing an existential threat to their industry, bail agents are fighting back with a double-edged attack on a law that abolishes bail in California.

California Supreme Court Chief Justice Tani Cantil-Sakauye called it a “transformative day for our justice system” when Gov. Jerry Brown signed Senate Bill 10, the law that replaces bail with a system based on risk assessments that gives judges broader discretion over release. But the bill now faces both a referendum to repeal and a ballot initiative to grant bail constitutional protection.

The initiative, filed quietly last month, would amend the California Constitution to shield the right to bail through a bail bonds agent from legislation like SB 10. The Bail Reform Act would ensure “the right to obtain release at all times before trial by posting bail.”

The California Constitution already prohibits excessive bail, but the Bail Reform Act seeks to define it specifically. “Bail in excess of the amount reasonably necessary to ensure the personal appearance of the person charged with a crime to appear in court when his or her attendance is lawfully required, is excessive,” the initiative reads.

Sacramento lawyer Tom Hiltachk, who filed the initiative and sought the referendum on behalf of the bail industry, did not respond to calls seeking comment.

“It seems to me it’s a little desperate,” said Sen. Robert Hertzberg, a Democratic lawmaker who helped write SB 10 and has championed the anti-bail movement in California. He says he finds it odd that the state constitution would be amended to protect an industry.

“It’s the weirdest thing. All of a sudden they care about the liberty of people?” he said. “They care about making money. I don’t have a problem with making money, but do it honestly. One of the dark sides of being in public service is these advocates so often never care about the public good, they care about preserving their interests.”

For Hertzberg, the initiative is a last-ditch effort, like throwing everything against the wall to see what sticks.

“Do they want to repeal SB 10 or do they want bail in the Constitution?” he said, adding that for voters “it will be confusing”

Under SB 10, those charged with nonviolent, “low-level” misdemeanors could be released within as little as 12 hours after being booked into jail, and charges of stalking or domestic violence are exempt. Those arrested for felonies will be immediately assessed for their risk to public safety and likelihood of returning to court.

Although SB 10 does away with a system that many social justice groups decried as unfairly punitive towards the poor, it was also seen as replacing one flawed framework for another. Critics have assailed algorithms and actuarial methods that assess a person's threat to public safety as racially biased, and say they may lead to more people being incarcerated than before. Others are uncomfortable with judges being given even broader discretion to determine risk.

Jeff Clayton, executive director of the American Bail Coalition, is among SB 10's strongest critics. "I think the same things that were issues when SB 10 passed are still issues," he said. "We're not going to solve society's evils by fixing the bail system. We're certainly not going to solve racism. It's more fundamental and it's more about economics and the legacy of slavery and discrimination."

Clayton says he's not even sure enshrining bail as a constitutional right in California will solve the problem.

"I don't think any initiative is going to fix the system at this point," he said. "Obviously it would continue what we've all known as the right to bail for centuries on this continent so it's probably a good thing, but the fundamentals of the issue are not going to be fixed by this amendment."

Clayton is more optimistic about the effort to repeal SB 10.

"The referendum has a chance because of the wide opposition," he said. "The no-money bail system movement is over in my mind. It's a bad concept. People don't want that. This is about finding doors out of the jail, not finding more pathways to keep people in."

Hertzberg said he's working to address concerns about bias. He pointed to this year's Senate Bill 36, written in partnership with the Ella Baker Center for Civil Rights, which establishes guidelines for using risk assessment tools to mitigate bias.

"SB 36 requires the issue of bias to be assessed," Hertzberg said. "The whole purpose was to fix the things I could not fix last year."

Though the future of SB 10 is uncertain given the bail industry's two-pronged challenge, courts are forging ahead to craft a justice system without bail.

On Friday, the Judicial Council will meet to discuss how to dole out \$75 million designated by the Legislature for pretrial pilot projects in 16 courts. The projects, which will be tested over a period of two years, will analyze bias based on race, ethnicity and gender in pretrial decision making.

Contra Costa County Public Defender Robin Lipetzky had concerns about the final version of SB 10, as it does not require a full evidentiary hearing for a judge to make a risk determination. "It was more of a rubber-stamp procedure," Lipetzky said.

But she said the law is a step in the right direction, and blasted the initiative as a money grab by the bail industry.

"Money bail is what needs to be gotten rid of. We have completely gotten away from what the purpose of bail was, which was you deposit an amount with the court you can afford and you get that money back," she said. "I see this initiative as nothing more than an effort to enshrine the for-profit bail bond industry with constitutional protection. It's unnecessary. Worse, it perpetuates the existing wealth-based pretrial system which unjustly burdens poor people and people of color."

Lipetzky added, "It's just disingenuous for them to argue it's an issue of justice. For them it's an issue of profit."

The initiative could very well be a response to a pending constitutional challenge to bail in the California Supreme Court. In May, the court agreed to take up the case of 64-year-old Kenneth Humphrey, accused of robbing his 79-year-old disabled neighbor of \$7 and a bottle of cologne in 2017. An appellate court found Humphrey's initial \$600,000 bail and later \$350,000 reduction unconstitutional, and ordered a new bail hearing. The appellate panel also said judges must consider a defendant's ability to pay when setting bail.

“The Humphrey decision is going to be as important, if not more, than what happens with SB 10 in terms of the landscape of bail within California,” Lipetzky said. “When Humphrey comes down it’s going to clarify what the constitutional parameters are of bail. Right now, that’s still unclear.”

Like Lipetzky, Hertzberg mourns what the bail system has become.

“My father used to be a jailhouse lawyer. In the old days the judge would say ‘\$100 bail’ and you’d put up your \$100 and then next day you come back to court and you would get your \$100 back,” he said. “Today because of the way these bail companies work they put up \$5,000 for a \$50,000 bail, you come back the next day, the charges are dropped and you lost your \$5,000 bucks. The whole thing got prostituted by the insurance companies and the payday type lenders and it lost its purpose.”

Hertzberg said he doesn’t have a problem with a bail system based on a person’s ability to pay, but he doesn’t see the point in moving backward.

“What we know is you can make sure people are safer, that they return to court through cheaper and better ways and we know the impact on poor people. We have such tools available to be able to ensure justice and safety and reduce public costs,” he said. “We’ve learned a lot from the days when my dad was a jailhouse lawyer.”

KQED News

NEWS

Judge: S.F.'s Inaction on Bail Reform Could Cause More People to be Held in Jail Longer



LISTEN 3 min

By Marisa Lagos Alex Emslie Aug 23



A sign for bail bonds on Bryant Street in San Francisco on Feb. 16, 2016. (Alex Emslie/KQED)

Update, 3:50 p.m. Friday: A federal judge warned Friday that she is considering issuing an order that would eliminate the use of cash bail in San Francisco, and with no alternative system in place, that could result in more arrestees waiting in jail for days before appearing in court.

That's exactly what the city's sheriff is arguing should happen.

"If I adopt the position proposed by the sheriff, then everybody waits on the court, rich and poor," Judge Yvonne Gonzalez Rogers said in her Oakland courtroom Friday. "Everybody waits because they chose to do nothing for five months."

Gonzalez Rogers found in March, as other courts have, that reliance on cash bail creates an unconstitutional inequality between wealthy and poor arrestees. Those who can afford to pay hundreds or thousands of dollars to guarantee they'll show up in court are released within 12 hours on average in San Francisco, according to court filings, but those who can't afford to pay may end up waiting in jail for several days before a judge decides whether they can be released pending trial.

The lawsuit initiating the case was brought in late 2015 by two women arrested separately in San Francisco. Riana Buffin spent almost two full days in jail because she couldn't afford bail and subsequently lost her job. Crystal Patterson was jailed for more than 24 hours before promising to pay \$15,000 to a bail agent so she could be released.

Their attorneys are asking Gonzalez Rogers to keep the option to pay bail in place and order San Francisco to create alternatives for arrestees who can't afford to pay that would still result in release within 12 hours.

"We're saying it can be speedy. The Superior Court said it can be speedy. Make it speedy," plaintiffs' attorney Sadik Huseny argued Friday.

Gonzalez Rogers said San Francisco Superior Court had "stuck its head in the sand" on the issue. Huseny said the local court "torpedoed" a plan to replace cash bail the sheriff had tentatively agreed to. He declined to elaborate after the hearing on that now-abandoned proposal, which was part of confidential settlement negotiations.

While San Francisco opposes the plaintiffs' plan to keep the option for bail and ensure that pretrial release decisions are made within 12 hours of booking, an attorney representing the city and sheriff said there is still the potential for a compromise. The parties were ordered to another settlement conference on Wednesday.

Original post, 6:30 a.m. Friday: Five months after a federal judge ruled that San Francisco's bail system deprives low-income defendants of their constitutional right to freedom before appearing in court, the same judge is expected to rule Friday on how the city should replace prearrestment cash bail.

The federal case is one of several legal and political challenges to California's cash bail system, which often requires defendants to pay bail agents hundreds or thousands of dollars to secure their release before an early court appearance at which they are formally charged, called an arraignment, or pending trial. The debate pits public safety concerns over defendants who could flee or commit more crimes against the presumption of innocence until proven guilty.

State legislation to eliminate bail entirely — and replace it with a system that gives judges far more discretion — was signed last year by then-Gov. Jerry Brown but hasn't yet taken effect. That's because the bail industry collected enough signatures to place a referendum on the November 2020 ballot, asking voters to overturn the law.

The case in court Friday was brought by two women who were arrested in San Francisco but couldn't afford to post bail before their arraignment and had to stay in jail for more than 24 hours. The suit challenged the city's pre-arrestment bail system, arguing that it discriminated against poor people because they ended up staying in jail longer than people who could immediately pay to be released.

In a March ruling, Oakland-based federal Judge Yvonne Gonzalez Rogers agreed, writing that plaintiff Riana Buffin spent 46 hours in jail and lost her job because she couldn't afford bail; and plaintiff Crystal Patterson spent 29 hours in jail and had to promise to pay \$15,000 to a bail agent to secure her release.

Rogers wrote that people arrested in San Francisco who are able to post bail get out of jail more quickly than people who cannot, that the sheriff's use of bail "significantly deprives plaintiffs of their fundamental right to liberty," and that alternatives exist that will still protect public safety and ensure that offenders show up in court.

But she didn't rule then on what the city should do to replace cash bail. Instead, she asked the parties to brief her on what they believe San Francisco should do.

There's not a lot of agreement.

Plaintiffs, led by Washington, D.C.-based nonprofit Equal Justice Under Law, are asking the court to create a sort of menu of options, which will allow people who can afford bail to still post it — something that usually occurs within 12 hours. Those who cannot afford bail would also be required to be released within 12 hours — either on their own recognizance (in which a person simply signs a paper promising to appear in court later), or agreeing to an unsecured bond (in which a defendant promises to pay the full bail amount if they do not appear in court later).

The plaintiffs' proposal calls for arrestees to be held longer than 12 hours only if police file a declaration with the court arguing that releasing the person would pose a public

safety risk. That declaration would be due within eight hours, and judges would have to rule within 24 hours.

"This mechanism will serve to equalize treatment between those who can and cannot afford bail, while providing important public safety safeguards in particular circumstances," the plaintiffs wrote in their brief to the court.

Their proposal also calls on the court to monitor the process to ensure that police aren't simply objecting to releasing every single person.

The San Francisco Sheriff's Department — which previously refused to defend the city's cash bail system — is calling for a much more sweeping change, one that would sideline money bail entirely for the period before someone arrested is arraigned.

In a brief written on behalf of San Francisco Sheriff Vicki Hennessey, lawyers for the city argue that the entire pre-arraignment bail system should be thrown out, in favor of one system that assesses flight and public safety risk for all arrestees, regardless of their ability to pay.

The city also argued that a federal judge shouldn't decide what that system is — the relevant public entities should, such as the sheriff and the the local court.

San Francisco argues that any alternative would run afoul of state law and likely maintain inequalities among defendants based on how much money they have.

Meanwhile, the California Bail Agents Association — which intervened in the case when the sheriff refused to defend the bail system — is arguing for a more narrow judgment. In a brief, the association wrote that the judge's final decision should apply only to the class represented by the plaintiffs: Those who cannot pay.

And, lawyers for the bail association argued, the judge's order cannot create a system that requires funding from parties that aren't a party to the lawsuit — the sheriff and the courts.

Those, of course, are the very same parties that the Sheriff's Department believes should be in charge of coming up with an alternative.

The hearing will take place at 10 a.m. Friday in Oakland.



States are trying to change a system that keeps poor people in jail. The bail industry is blocking them.

By [Collette Richards](#) and [Drew Griffin](#), CNN Investigates

Updated 6:38 AM ET, Fri August 30, 2019

(CNN) On the side of a building just outside the county jail in Des Moines, Iowa, there is a drive-thru window. But it is not dishing out burgers and fries. The main item on its menu is freedom, and it can come at a steep price.

"Get your bail bond here. Don't wait at jail," reads the old-timey script on a sign in the yard.

The unassuming tan building with green and burnt orange accents sits on a small hill before the jail. There is no way to miss Lederman Bail Bonds on the way in or out of the correctional complex.

It's the family business -- run by four brothers who have operations across Iowa and the rest of the Midwest. But behind the familiar drive-thru window set up is a well-funded political force with an agenda to stop the jail at the bottom of the hill from making any changes to a bail system that keeps their profits rolling in.

Across the country, bail bond companies like the ones owned by the Ledermans are up in revolt, fighting back against states' efforts to rethink and overhaul an antiquated money bail system.

Corrections officials, jail runners, judges, public defenders, civil rights groups, and bipartisan leaders alike agree that the system in place that handles the presumed innocent is broken.

As structured, the bail bonds industry survives largely off those who don't have the financial resources to post bail. Overwhelmingly, the service of a bail bondsman is their only way out of jail. Bail bond companies make money by charging a fee -- typically 10% of a defendant's bail amount. So if a defendant has bond set at \$50,000, the bail bond company charges \$5,000 to get them out. No matter what, the bonds company will collect that charge -- guilty or not guilty. Even if the charges are dropped. That is the price and process of release.

Those who can't afford the 10% the bond company charges can set up a payment plan, usually in small installments like \$100 a week until the big bill is paid off. Contracts like those tether vulnerable families to debts that can linger on for years -- landing them in court for missed payments, with garnished wages and accruing interest. Experts say defendants will sometimes plead guilty to lesser charges, even if they are innocent, in order to avoid the bail system and get out of jail sooner.

More affluent defendants, who can afford to post bond with their own money, go free and get the money back provided they show up for their court dates.

Reform efforts across the country seek to make the bail system less burdensome on the poor. The majority of states addressing the issue are trying to make money bail the last resort, by mandating that judges apply the "least onerous release conditions possible" and consider the defendant's ability to pay, as well as eliminating money bail for low-level charges. As a result, the \$2-billion-a-year bail bonds industry is in a fight for its very survival.

A CNN review of all 50 states and the District of Columbia found that the powerful industry has derailed, stalled or killed reform efforts in at least nine states, which combined cover more than one third of the country's population.

To date, more than 25 states have passed laws or enacted changes that address bail practices, while several still have pending efforts or bail procedure review committees in the works.

The story of bail reform is as messy as it is laborious. It's a long road of continuous push and pull between stakeholders. Even among reformers, there's disagreement over how best to do it. A popular remedy is using some sort of computerized "risk assessment" tool that evaluates the likelihood a person would show up for court based on criteria such as age, past failures to appear for court and criminal convictions. However, some scholars and civil rights activists, including the ACLU, oppose such tools, saying they are flawed and often racially biased.

Whether attempting sweeping or modest change, lawmakers have described the bail industry's involvement as nasty and contentious.

Jeff Clayton, the Executive Director of the American Bail Coalition, said that the process is tense on both sides and that his industry is unfairly being called predatory.

"We don't arrest the people," Clayton said. "We don't set their bails. And if people want to use our services, we feel that's an extension of their constitutional right to do so." Clayton adds that while his group "participated in public policy discussion regarding bail reform" in the nine states outlined by CNN, "we definitely had significant impact" but "I don't think we were the driving force."

Even after a reform is passed, the battle can continue.

Last year, California lawmakers passed the most far-reaching legislation yet -- ending cash bail altogether. But shortly after the passage of that law, the bail bond industry, and the insurance companies that underwrite their bonds, raised more than \$3 million to

fund a ballot referendum that put everything on hold. The effort was successful, and voters will decide the issue on the November 2020 ballot.

The same thing is happening across the country.

In Texas, for example, there was a clamor for reforms following the jailhouse death of Sandra Bland, who had been arrested for allegedly assaulting an officer during a July 2015 traffic stop for not using a turn signal. Her family was working to secure the 10% fee to hire a bondsman on her \$5,000 bail, but three days after her arrest she was found hanging in her cell. Had Bland been able to afford her bond, reformers say, she would not have sat alone in a jail cell for three days.

Texas tried to pass reforms in the 2017 session, but the bail industry's lobbying efforts helped thwart the measure from progressing, according to a committee staff member. This past session, despite even wider support and a strong initiative by the governor, bail reform died again, as the bill the House passed was never put on a Senate committee calendar.

Most lawmakers pursue bail reform because of the consequences that come with putting a price on someone's freedom, particularly if that person is poor.

County jails are overflowing with people waiting to have their day in court. They far outnumber those who are serving actual sentences for crimes.



How the bail industry keeps people in a cycle of debt 04:12

Cherise Fanno Burdeen, who runs the Pretrial Justice Institute, an organization that has fought for reform for over four decades, likens the bail system to a "ransom." And for those who can't pay, she said, the toll of remaining in jail until trial can be devastating. They might lose a job, which, in turn, could mean rent won't get paid, families won't be fed and so on. It's particularly troubling for people accused of nonviolent or relatively minor crimes, she added.

"Low-risk people who can't afford to post bond spend days, weeks, months in jail until they take a plea or their cases are actually dropped," said Burdeen. "It has a dramatic impact on people."

Alice Hughes' experience with a bail bonds business meant she had to come out of retirement and find a job.

It started with a phone call from her nephew, who was arrested on drug charges and violating a protective order and wanted her to help bail him out of a Baltimore jail. His bond was \$75,000. Hughes said she did what anyone in her position would do. She took all the cash she had, \$700, and brought it to a bail bonds shop across from the jail. The money didn't come close to the \$7,500 charged to get her nephew out. So she co-signed paperwork setting up a payment plan for the rest.

"Normally, I check things out before I do them. I read everything," Hughes told CNN, "but in this instance, all I was thinking about was getting him out."

Hughes' nephew did get out, and he was released on bail, but failed to keep up with the payments to the bond company. Before Hughes knew it, the company went after her.

And the debt kept getting bigger. The court ordered wage garnishment for her to chip away at the debt.

Her biweekly paycheck from the retirement community she works at has \$131 taken from it and given to that bond company. Because of accruing interest, she says, she may never be able to pay it off. At the time of her case's judgment she owed \$8,690. Hughes's attorney has filed a motion to have the garnishment end, and she is part of a putative class-action lawsuit that alleges the bail company was operating without a license. The parent company says it was licensed, but she was dealing with an unlicensed entity. The court has denied two motions to dismiss.

Maryland's highest court adopted a rule in 2017 that requires judges to consider defendants' ability to pay for their release, among other aspects. But the change came too late for Hughes and her nephew, who was arrested in 2014.

It can take years to fully measure the effectiveness of reforms. But studies in several counties show their effort at overhauling the bail system have been successful at achieving two main goals: Making sure people show up for their court dates and reducing recidivism rates.

In Spokane County, Washington, a state auditor report found that "defendants released on pretrial services were much more likely to show up for their court hearings than those released on bail."

Lucas County, Ohio, saw a 50% decrease in recidivism for those released on misdemeanor charges, according to a report by the National Association of Counties.

Results and practices such as those have prompted lawmakers to seek statewide reforms. In a handful of states such as Montana and New Hampshire, officials say they did not face heavy backlash from the bail industry when seeking changes. Seven states and the District of Columbia do not have a private bail bond industry. Instead, they have a mixture of options like allowing defendants to pay 10% of their total bond directly to the court, like they would through a private bondsman. But for nearly every other state considering reform, measures are challenged by the bail bond industry and its lobbyists.

That was the case in Iowa. And a good part of the resistance to reform measures there can be traced back to the owners of the hilltop bail bond drive-thru.



Lederman Bail Bonds Des Moines, Iowa location.

In a courthouse across the street from the Lederman's bail bonds office in Davenport, Iowa, justice officials started a pilot program last year to ease the burden of bail on the poor.

Under the program, judges in four counties used a computerized risk assessment tool called the "Public Safety Assessment" to determine a person's risk of failing to appear at court or reoffend if released.

The tool analyzes nine risk factors, including age, past criminal convictions and previous failures to appear. Judges were then given a defendant's risk score to determine whether he should be released on his own recognizance, have some level of supervision or require a bond. Decisions were ultimately up to a judge.

The pilot program threatened the profits of the bail industry and Lederman's family business. And Josh Lederman set out to do something about it.

Josh Lederman, one of the owners of Lederman Bail Bonds, began attending monthly public meetings for Department of Corrections where he questioned the merits of the pilot program.

Along the way, he opened up his wallet, giving more than \$36,000 to Republicans, mostly those running for the Iowa state legislature, donating more in one year than he had in the past 15 years combined. Some of the candidates were running unopposed in their races.

But his biggest investment started in 2017, before the 2018 legislative session, when he began shelling out about \$74,000 to date to hire a powerful lobbying firm in Des Moines.

The Lederman's lobbying efforts worked, according to officials in the state justice system and Democratic state lawmakers.

Late in the legislative session last year, language to end the program was inserted into the Justice Systems appropriations bill which passed, killing the bail reform pilot program.

This came as a shock to many, including Democratic legislators who fought against the program-killing language.

"This was an unusual piece of legislation, stuck in a budget bill," said Iowa state Sen. Tony Bisignano.

Another Democratic lawmaker said it all came down to money. "Lederman Bail Bonds didn't like the program because there were defendants that were getting out of jail without having to post any type of a bond," said state Rep. Rick Olson. "They were losing business."

When the bill landed on Gov. Kim Reynolds' desk, she used the line-veto to extend the program to run until December 31 last year, when it ultimately ended.

Lederman Bail Bonds did not respond to multiple requests for comment.

This session, the legislature had the opportunity to address the pilot program's future. But the same language to forbid the use of the PSA tool was included in the same budget bill, and the program has been officially ended.

CNN has talked to over a dozen officials in Iowa -- judges, corrections officials, public defenders, and legislators alike -- who supported the bail reform effort and are now trying to figure out the next step in bail reform in their state.

Burdeen, from the Pretrial Justice Institute, believes that despite the bail industry's efforts, there is momentum behind changing the bail system. "I think that there's a real need for an awakening around fundamental fairness," she said.

CNN's Audrey Ash contributed reporting.



Concerns Over Bail Reform

Tuesday, September 3rd



EYE ON THE COMMUNITY

Bail reform has become a popular social justice cause in recent years. However, twenty-seven top researchers from Harvard, Princeton, MIT, Columbia, NYU and UC Berkeley jointly issued a scathing criticism of pretrial risk assessments tools which use an algorithms key to determine which offenders are eligible for bail.

Jeffrey Clayton, Executive Director of the American Bail Coalition, a trade organization committed to developing the most efficient means for the pretrial release of criminal defendants, came on the program to discuss the latest developments with bail reform.

Clayton explained how the 27 researchers sent individual letters to three specific jurisdictions all in reference to the pending Senate Bill 10 which would essentially abolish cash bail and replace it with pretrial risk assessment.

00:06:49

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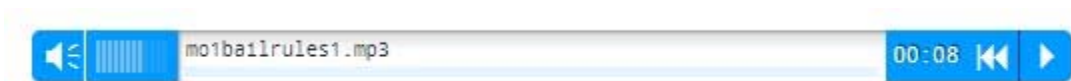
Missourinet

Audio: Missouri Supreme Court limits judges on charging cash bail

State News September 10, 2019 KTTN News



The state Supreme Court is restricting Missouri judges from using cash bail as a condition of a defendant's release from jail before trial. The new rules say judges can only charge bail fees to help ensure the safety or the defendant's appearance in court. Jeff Clayton with the American Bail Association tells Missourinet he thinks a serious study of the state's bail system should have been done before new rules were set.



J.R. Hobbs, a Kansas City defense attorney and a member of a task force recommending changes to the court, tells Missourinet the rules are up to speed with current law and are not a total overhaul. He says one rule lists a variety of factors to decide how to set bond.



Jeff Clayton with the American Bail Association says many jurisdictions that have softened bail rules, have resulted in a climb in repeat offenses and defendants not showing up for court.



Johnson County Prosecutor Rob Russell, a member of a task force recommending the changes, tells MissouriNet the court is simply restating federal law.



Jeff Clayton with the American Bail Association thinks the adjustments will tie the hands of law enforcement, judges, lawyers and prosecutors in getting bail and arrest warrants.



Under the rules, judges are also restricted to how many days they must complete a court hearing for the accused.

PUBLIC AFFAIRS

[NEWS](#) • [PUBLIC AFFAIRS](#) / SEPTEMBER 18, 2019

Pretrial Expert Criticizes New Tool Indiana Courts Will Use

[BRANDON SMITH](#)



The Monroe County Courthouse.
Barbara Brosner/WTIU

A leading expert on the pretrial system sharply criticized a new tool Indiana courts are expected to use next year.

State courts are expected to begin using pretrial risk assessments in 2020.

A new rule taking effect Jan. 1 says courts should use a tool known as IRAS to help determine whether criminal defendants should be released before trial or where to set bail amounts. The risk assessments examine, for instance, demographics, criminal history and mental health status.

But American Bail Coalition executive director Jeff Clayton says those tools don't work. He points to its use in Kentucky.

"If anything, it made the situation worse," Clayton says. "It had a trivial impact on the jail populations and resulted in a slight increase in failure to appear and a slight increase in new crimes while on bail."

But Monroe County Judge Mary Ellen Diekhoff used the risk assessments as part of a pilot program. She insists the tool doesn't replace the judge's discretion.

"What it does do is assist with information and it also assists with discussions," Diekhoff says.

The state is holding a pretrial summit next month to help justice system officials learn about the new tools.

Contact Brandon at bsmith@ipbs.org or follow him on Twitter at [@brandonjsmith5](https://twitter.com/brandonjsmith5).

Daily Journal

Sep. 23, 2019

Bail changes move forward despite hold on SB 10, but critics unsure it's moving in the right direction

Bail agents' attorneys say those who can afford to make bail won't be allowed to under the new arrangements, while other stakeholders criticize pre-trial assessment tools that some pilot programs have found discriminatory.

When it comes to California's cash bail system, both advocates and some critics agree on one point: that upcoming changes may replace cash bail with policies that uphold existing problems in the state's criminal justice system, including lengthy pre-arraignment processes and a liability to discriminate against people of color.

Bail agents' attorneys say those who can afford to make bail won't be allowed to under the new arrangements while other stakeholders criticize pre-trial assessment tools that some pilot programs have found discriminatory.

Consensus on this issue was illuminated by a civil lawsuit that recently resulted in San Francisco County banning the sheriff from using the bail schedule during pre-arraignment. The recent settlement of *Buffin v. City and County of San Francisco*, CV15-04959 (N.D. Cal., filed Oct. 28, 2015) allows arrestees to be jailed for up to 30 hours before arraignment and requires the county to partially rely on criticized risk assessment tools to maximize efficiency. Riana Buffin and Crystal Patterson sued the county after they were separately arrested and denied release when they could not afford the bond set by the bail schedule. Buffin said she lost her job at Oakland's airport as a result.

The Sept. 3 judgment by U.S. District Judge Yvonne Gonzalez Rogers approving settlement of their case ruled a public safety assessment of arrestees, which includes the results of an electronic test, must be submitted to the superior court within eight hours of booking. The assessment measures how likely it is an arrestee will pose a public safety risk or fail to appear in court and is meant to help the court decide whether to approve release prior to arraignment. If the court doesn't reach a decision within 18 hours of booking, the results of the public safety assessment will determine whether the arrestee is released. Law enforcement officials can request a 12-hour extension for detainees if they believe they pose a public safety risk. Implementation of the judgment is pending agreement by the San Francisco Board of Supervisors to give additional funding to the program that provides public safety assessments in the county sheriff's department. Phil Telfeyan, executive director at Equal Justice Under Law and an

attorney for Patterson, said the settlement represents an improvement on the county's existing bail system. "We think the solution we came to with Sheriff [Vicki Hennessey] is the fairest way to balance the needs of arrestees who are presumed innocent, versus the sheriff's needs to thoroughly vet for public safety," he told the Daily Journal. "Under the old system, only those who had enough money to pay bail could get out in ... approximately 10 hours. Under the new system, how much money you have is not going to [be] a factor. So rich and poor will finally be treated equally."

The settlement also shifts the framework for who arrestees are viewed, he said. "Individuals who are arrested have not been convicted. They should be assumed innocent until they are proven guilty, and that's what this solution captures. If there are no red flags, if someone's got a non-serious charge, there's a default for ... release." But others are concerned eliminating the cash bail option in pre-arraignment will strain the efficiency of the pretrial system, arguing the settlement fails to address the increased pressure that could result from more arrestees waiting in jail.

Krista L. Baughman, an attorney with Dhillon Law Group Inc. who represented the California Bail Agents Association, the intervenor defendant in the suit, said there are already options for arrestees to pursue pre-arraignment release in San Francisco County without abiding by the bail schedule. She points specifically to Penal Code 1269C, under which arrestees can apply to be released for a bail amount that is lower than what the bail schedule mandates. "The settlement doesn't actually change all that much other than getting rid of the bail option, which is half of people's options," she said. "I think there are going to be a lot more people waiting in jail while they wait to see a judge."

Jeffrey Clayton, executive director of the American Bail Coalition, expressed similar concerns. "We're going to disadvantage people that are [able] to post monetary bail and hold them in jail longer so that it appears more fair to those that can't, rather than doing something about those that can't," he told the Daily Journal. "But it's not going to be more fair. Everybody's going to stay in jail longer."

Electronic risk assessment tools are typically advocated as a way to absorb the stress of more detainees, but critics including Baughman are skeptical they will be effective. "I am not personally convinced that a computer test can accurately assess whether someone's likely to return to court, or whether they're a public hazard, which is what a judge is trying to do at arraignment," she said.

In July, 27 researchers from Harvard, Princeton, New York University, UC Berkeley, Massachusetts Institute of Technology and Columbia University published a statement in response to the California Legislature's passage of SB 10, which would have entirely phased out cash bail in the state by next month. The bill required some arrestees to be tested via an electronic risk assessment tool. The legislation is on hold pending a 2020 referendum launched by the national bail industry.

Colin Doyle, a staff attorney at the Criminal Justice Policy Program at Harvard Law School and a co-author of the statement, said while he is in favor of eliminating cash bail, he also believes electronic risk assessment tools mirror the bail system's liability to discriminate against minorities.

"The challenge for the tools ... is just the classic computer science adage: garbage in, garbage out," he said. "Tools can only ever be as good as the data [they] are trained on, and criminal history data, court data in the United States, is just infected with racial bias at every step in the process, so it's unreliable."

“That puts severe limits on any tool that you could create using that data, and the results that you would get are invariably going to be discriminatory against the same communities here,” he said. “Black people, and most especially black men, are who the tools are going to be discriminatory against.”

Doyle also resists the notion the tools can be improved.

“When we really dig into the mechanics of how these tools work, they’re limited not because their math is wrong,” he said. “Human behavior is just really hard to predict, especially something that’s so rare and also in a lot of ways underspecified. Violent crime is a huge category of different things and all kinds of different actions. ... The concern with these tools is that they cover up the uncertainty.”

Still, Sadik H. Huseny, an attorney representing plaintiff Patterson in the underlying lawsuit, is optimistic the county is moving in the right direction.

“I’m not surprised that there are studies out there that talk about the [public safety assessment] tool and other mechanisms that are all aimed at furthering how we can best make those calls in an imperfect system — how can we best make those calls as quickly as possible that an individual is not a public safety threat and [does not pose] a failure to appear threat,” he said.

“The good news ... is that there’s a system in place where judicial officers get that report ... and make an individualized determination within 18 hours for everybody, whether or not they have money,” he added. “That’s the sort of system that moves us further along the line towards constitutional equal protection and just due process rights of individuals in general: to be in jail as little as possible, consistent with again public safety and other issues.”

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Los Angeles Times

Column: Facing eradication, the bail industry gears up to mislead the public about its value



Unless it has its way at the ballot box, the bail industry will soon be a vestige of the past. (Los Angeles Times)

By [MICHAEL HILTZIK](#) BUSINESS COLUMNIST
OCT. 4, 2019 6 AM

Few businesses enjoy a reputation for providing a public service as inflated as the bail bond industry.

To hear bail agents talk, they're virtually the only people who can protect innocent communities from violent chaos perpetrated by defendants let out of jail before trial. "The most effective form of release in terms of ensuring appearance at court were

releases on a financially secured bail bond,” the American Bail Coalition, the industry’s trade group, says [on its website](#).

In California, the business of issuing bail bonds for profit is under attack as it is nowhere else in the nation. With the signature of then-Gov. Jerry Brown on a bill dubbed SB 10 in 2018, the state outlawed cash bail for criminal defendants. SB 10 created a new system allowing judges much greater discretion in setting terms of pretrial release for all but the most violent defendants.

The bail system makes payday lending look like child’s play.
SEN. ROBERT HERTZBERG, D-VAN NUYS, SPONSOR OF SB 10

Other states have remade their pretrial systems to reduce the role of cash bail, but none has yet gone as far as California.

“Were SB 10 to become law, it would practically mean the end to the commercial bail industry in California,” Jeffrey J. Clayton, executive director of the American Bail Coalition told me.

As [my former colleague Jazmine Ulloa reported](#) a few days after Brown signed the bill, the law “could spell doom for not only bail agents, bounty hunters and surety companies across the state” but also a nationwide industry currently collecting [\\$3 billion in annual revenue](#).

Is that a bad thing? Probably not.

SB 10 was inspired by the need to reform a pretrial detention system that tied defendants’ freedom to their ability to pay bail. “Unsurprisingly,” the ACLU observed in a 2017 report, “there is racial bias in determining who needs to pay and who does not, and in how high bail is set.” A 2017 report by a blue-ribbon panel to California Chief Justice Tani Cantil-Sakauye — the basis of SB 10 — found that the bail system “exacerbates socioeconomic disparities and racial bias.”

The system allows wealthy defendants to purchase their freedom by making bail; poor defendants are stuck in jail even on lesser charges because they can’t make bail that judges may deliberately set beyond their means.

This system magnifies their disadvantages. Beyond being stuck in insalubrious quarters, jailed suspects have less opportunity to assist in their defense than released

defendants. They can lose their jobs or income while they're incarcerated, and face greater pressure to plead guilty even if they're innocent.

The bail industry is fighting back hard against SB 10. The 2018 law, which was to go into effect this month, has been put on hold by an industry campaign to pass a referendum overturning SB 10. The measure will appear on the November 2020 ballot.

“We think bail is a way for people to not have to subject themselves to state supervision during prosecution,” Clayton says. “We think bail is a fundamental constitutional right — judges should have the option, as should defendants.” Invoking a favorite conservative bogeyman, he complained that some anti-bail organizations are funded by George Soros. (Soros’ [Open Society Institute](#) has supported numerous initiatives aimed at curbing pretrial abuses.)

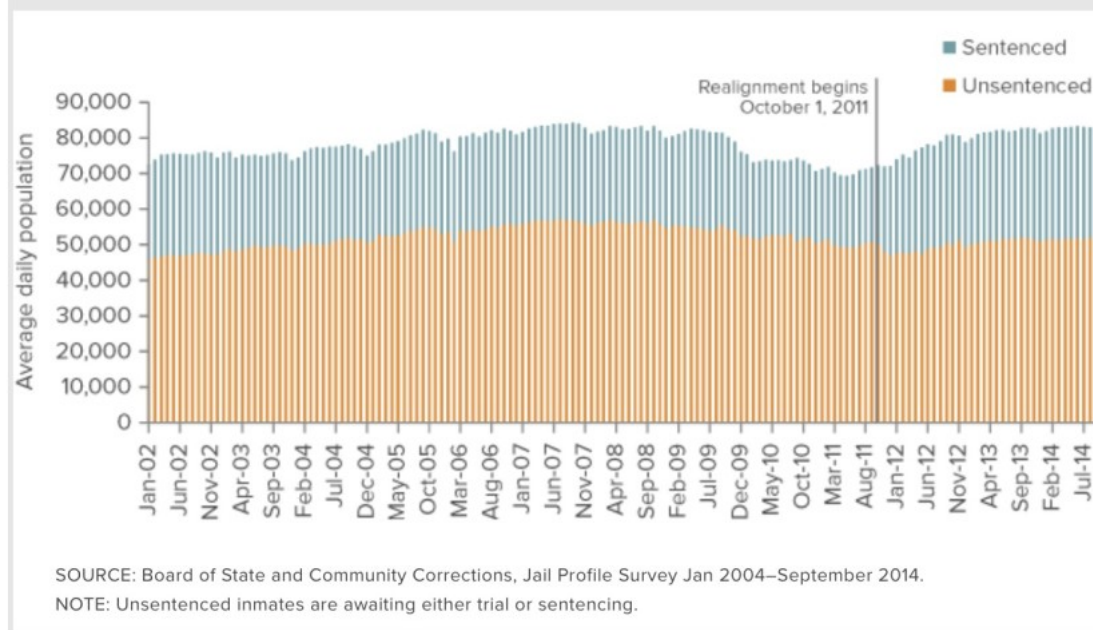
One wouldn’t be surprised if the industry’s referendum campaign features personal stories of moms and pops whose families have operated bail agencies for generations but now face extinction — that’s been the theme of [the pushback against SB 10](#) virtually since the day Brown signed the bill.

As a picture of the bail bond industry, that’s flagrantly misleading. Although there are 3,200 licensed bail agents in California, the business actually is dominated by big insurance companies such as the \$40-billion Japanese firm Tokio Marine, which provide the money for bonds and collect much of the profit.

Based on the principle that one can judge the size of an industry’s ox being gored by the scale of its spending on lobbying and politicking, the stakes in this fight are sizable indeed. Industry contributions to Californians Against the Reckless Bail Scheme, the referendum campaign, have totaled more than \$3.5 million since 2018 — and the campaign is only just beginning.

The largest contributor, at more than \$794,000, is Triton Management of Carlsbad, which is largely owned by the Oregon private equity fund Endeavour Capital and affiliated with Aladdin Bail Bonds, a national firm that is the largest bail agency in California.

Figure 2. Most jail inmates are not serving sentences



Nearly two-thirds of the California prison population were awaiting trial or sentencing in 2014. The vertical line designates a realignment between state and county jail administrations.

(Public Policy Institute of California)

Bail also imposes immense costs on a state's prison system. According to the Public Policy Institute of California, [nearly two-thirds of the state's more than 80,000 inmates](#) were awaiting trial or sentencing in 2014. New Jersey's pretrial reforms in 2017 sharply reduced the number of inmates in state prisons and cut the time that pretrial defendants spent in jail by half.

Defendants who can't meet cash bail can negotiate their freedom through bail agents, who typically charge premiums of 10% — that is, \$10,000 for a \$100,000 bail. The premiums are nonrefundable, even if the charges are dropped, condemning low-income families to what might be years of repayment and subjecting defendants and their family members to nearly unlimited invasions of their privacy by their bail agents.

“The bail system makes payday lending look like child's play,” the sponsor of SB 10, Sen. Bob Hertzberg (D-Van Nuys), told me.

[A federal court lawsuit](#) alleges that California bail agents have conspired to fix prices, setting premiums at 10%, discouraging price-cutting, and misleading customers into

believing that 10% is a legally required rate. In fact, price cuts are perfectly legal. The lawsuit names 23 insurance companies and six bail agents, among others. The defendants have moved to dismiss the lawsuit, asserting that no such conspiracy exists.

The image of bail as a surefire means of protection for society against habitual criminals or fugitives from justice is largely a fiction.

Among the most common misconceptions is that criminal defendants as a species are all potential absconders kept in check only by the prospect of forfeiting their bail money.

Figures on “failures to appear,” the technical term, are spotty, but those that are available suggest it’s nowhere as big a problem as it’s portrayed. The vast majority of defendants, whether out on bail or released on their own recognizance, show up for court dates. Nor do they go on crime sprees once they’re out on the street.

The U.S. Justice Department calculated in 2009 that [83% of all felony defendants](#) released before trial appear for all court dates, and of the remainder, almost all returned to court within a year. Only 3% remained fugitives after that time.

The statistics don’t materially change in jurisdictions that have largely, if not entirely, dispensed with cash bail, such as the state of New Jersey and Santa Clara County in California. “Concerns about a possible spike in crime and failures to appear did not materialize” after New Jersey reformed its pretrial release system in 2017, [the state courts reported this year](#).

In part, this reflects misunderstandings about why people miss their court dates. Studies show that a large proportion of failures to appear are due to [defendants’ confusion over court dates](#), difficulty getting time off from work or securing child care so they can make it to court, or other such factors [unrelated to a desire to evade justice](#).

“There’s an imprecision in the conversation about failures to appear,” says Lauryn Gouldin of Syracuse University law school, an expert on the bail system. “There’s a historic shorthand about ‘flight risk,’ but that doesn’t capture the majority of the problem. Most people aren’t going to flee the jurisdiction.”

Then there’s the impression that bail agents are so rigorously bound to their responsibility to forfeit the bail of an absconding defendant that they’ll move heaven

and earth to get a client to court, a notion that has made bounty hunters into heroic figures of popular culture.

In fact, only a tiny proportion of bonded bail is ever forfeited, even when a client fails to show up. In California, state law imposes onerous procedures on courts seeking to collect bail from bond agents, such as notification requirements with tight deadlines.

The rules can raise the cost of collection to more than the recovery is worth. Meanwhile, clerical errors or missed deadlines by courts can release bail agents from their obligations. “Bail bond agencies are [rarely held accountable to the courts](#) when an individual fails to appear,” the San Francisco city attorney reported in 2017. Bail bond agencies routinely challenge forfeitures, and almost always succeed.

“You know how many checks has this company written to pay a bail loss?” Jerry Watson, a vice president and legal official at AIA, the Calabasas-based parent of three major bond insurance firms, [told Mother Jones in 2014](#). “Not a single one.”

Those factors help make the bail business amazingly profitable. The California Department of Insurance, which regulates the bail industry, doesn’t maintain comprehensive statistics. But in an [analysis of two bail insurers](#) in 2014, the department determined that one had collected \$51.9 million in premiums in 2012-13 and forfeited only \$588,095, or 1.13% of premiums, and the other had collected \$51.2 million in that period and forfeited only \$282,484, a loss rate of 0.55%. (Loss rates on homeowner and auto insurance tend to run in the 60% to 70% range.)

Ending the cash bail system is merely the first step in reforming the pretrial detention system, criminal justice reformers say. Indeed, SB 10 has split the reform movement because of fears that it places too much discretion in the hands of judges.

“SB 10 was really about consolidating the power of judges and law enforcement in the pretrial context,” says John Raphling, a criminal justice expert at Human Rights Watch. The organization originally supported the bill but withdrew its support after amendments gave judges more latitude. That might “increase pretrial incarceration and even exacerbate racial and class biases in the current system,” Raphling wrote in [a Times op-ed](#) last year.

The bail industry is all but certain to use the split among reformers in its campaign against SB 10. At the moment, the campaign faces an uphill battle, though it’s at an early stage; a poll conducted for The Times by the UC Berkeley Institute of Governmental Studies found that [39% of likely voters would keep SB 10 in place](#), against 32% who would reinstate cash bail and 29% who are undecided.

“We’ve learned two things,” the Bail Coalition’s Clayton told me. “People want bail reform, but they’re not real sure they want Senate Bill 10.” The industry will be spending heavily to make them sure they don’t.

Pulitzer Prize-winning journalist Michael Hiltzik writes a daily blog appearing on latimes.com. His business column appears in print every Sunday, and occasionally on other days. As a member of the Los Angeles Times staff, he has been a financial and technology writer and a foreign correspondent. He is the author of six books, including “Dealers of Lightning: Xerox PARC and the Dawn of the Computer Age” and “The New Deal: A Modern History.” Hiltzik and colleague Chuck Philips shared the 1999 Pulitzer Prize for articles exposing corruption in the entertainment industry.



Why San Francisco's Bail Solution Is No Done Deal

By RJ Vogt | October 6, 2019, 8:02 PM EDT

Seven months after a federal judge ruled that San Francisco's bail system is unconstitutional, nothing has changed.

Police can still jail arrestees for up to 48 hours before they reach arraignment, the hearings where judges either set bail or release them without it.

While jailed pretrial, those arrestees who can afford to pay an amount preset by the county bail schedule are still allowed to do so, while those who can't afford to pay are forced to wait for a hearing.

A new system, tentatively agreed to by civil rights litigators and the local sheriff's office, would put everyone on an equal playing field, according to Equal Justice Under Law executive director Phil Telfeyan.

Blocking its implementation, however, is a lack of approval from the board of supervisors, the elected local legislature of San Francisco City and County.

"The board of supervisors can meet and approve this at any time," Telfeyan said. "Reform is long overdue."

He would know, having filed the underlying class action nearly four years ago on behalf of two women named Riana Buffin and Crystal Patterson.

Charged with grand theft and conspiracy at 19, Buffin was offered a \$30,000 preset bail bond she could not afford and detained for 46 hours before being released after prosecutors dropped the chargers. The needless stint in jail led to her losing a job at a nearby airport.

Patterson, then 29, received a preset \$150,000 bail on assault charges and managed to get out with the help of a bail bond agent. Like Buffin, charges were dropped within two days of arrest, but Patterson spent months paying off a \$15,000 debt, plus interest.

The class action sought a permanent block on wealth-based detention and was bound for trial until, in August 2018, then-California Gov. Jerry Brown signed a bill eliminating cash bail.

All parties agreed the new law made a bench trial unnecessary, and U.S. District Judge Yvonne Gonzalez Rogers ultimately ruled that the schedules are unconstitutional in March. Her ruling stated she'd block their use pending a hearing on how to word her order.

Determining the wording, however, is where things got sticky. Telfeyan's team argued for an injunction requiring a new process that would allow those who have the money to pay bail and leave, while those who don't could get a waiver and also leave.

But Sheriff Vicki Hennessy's office maintained that the case was about bail schedules, not a complete pretrial processing overhaul. As a result, the sheriff said the injunction should only block the use of bail schedules, not grant "a mass release of arrestees."

Meanwhile the California Bail Agents Association, which had intervened in the case in 2015 after Hennessy declined to defend the schedules, argued against both proposals. The bail group, which successfully lobbied for a 2020 referendum on the state's bail ban, said eliminating schedules entirely would exceed the scope of the class action by also affecting those who could've paid.

The dispute went to mediation, and by mid-July the parties said an agreement "in principle" had been reached.

But before that deal could be revealed, the San Francisco Superior Court told the sheriff's office not to agree until the state decided whether to provide \$13.8 million for the 24-hour, 7-days-a week-staff and resources that it believed a new pretrial bail system would require.

The request was denied a few weeks later in a move that Telfeyan said surprised him. He noted that the state Judicial Council granted funding to several other large counties, such as Los Angeles and Sacramento, for changes required by the new state bail law.

"I don't have any insight into their judicial council decision-making," he added, "but they were aware of this lawsuit."

In the wake of the state's decision, the sheriff's office ended up sticking with its original plan: no bail schedules, no new system for dealing with the expected increase in pretrial detainees. The plaintiffs, on the other hand, called for a plan in which the bail schedules were still used but all those who couldn't pay could be released without bail within 12 hours.

Overcoming their differences, the parties pitched a compromise proposal Aug. 30. Instead of bail schedules, jails would use a risk assessment tool and several other factors to determine if arrestees should be released without bail or see a judge.

If 18 hours — or up to 30 hours, for those police fear will threaten society or flee — pass without a hearing before a judge, the arrestees would be released without bail.

On Sept. 3, Judge Rogers granted the proposed injunction with one key condition: It cannot take effect until the local legislature says it will pay for the associated costs.

An attorney for the city declined to comment on whether the board of supervisors would sign off. But American Bail Coalition executive director Jeff

Clayton said it's unlikely, considering they could be held liable for paying attorney fees on a case that's dragged on for four years.

"They have to fund the use of the algorithm on all these cases, they actually have to spend money," he said. "And why should they be liable for their state judges following the law? They could say, 'No, we're not paying.'"

He added that, under the proposal, people who used to be able to pay for release within a few hours could be stuck waiting to find out the bail amount for up to 30 hours, much longer than the 12.6-hour average pretrial incarceration under the old schedules.

"It could triple or quadruple the amount of time that people, who would've gotten the same bail under the schedule, would get out," he said. "And it has the potential to increase how those who can't afford to post bond are going to have to sit there and wait. It just makes no sense."

But Telfeyan said that, if the deal is implemented, advocates will be able to monitor how the system affects people and whether sheriffs routinely push for 30 hour-detentions. He also maintained that it would allow the "vast majority" of arrestees to get out much sooner than before.

The board has until Thanksgiving Day to make its decision. If it won't pay, it's up to Judge Rogers to decide how bail works in San Francisco going forward.

--Editing by Kelly Duncan.



Change in law may have led to KCK bar shooting suspect being released

Javier Alatorre recently last month without having to post bail

Updated: 6:23 PM CDT Oct 11, 2019

[Michael Mahoney](#)

[KMBC 9 News Reporter](#)



KANSAS CITY, Mo. — A recent change in Missouri's criminal procedures may have led to a Kansas City, Kansas, murder suspect being out of jail on the night of last weekend's mass shooting.

Murder suspect Javier Alatorre's criminal record includes resisting arrest and fleeing from the police.

But Jackson County Judge Kevin Harrell released him last month on his own recognizance and no bail. Prosecutors considered Alatorre dangerous and a flight risk -- the main conditions judges are supposed to consider in cases like this.

The new state policy does not require bail unless a defendant is considered dangerous or a flight risk. It prevents people who cannot afford to make bail from being jailed just for that.

Defense lawyer Chris Angles said it's an example of a new criminal policy that did not work in this case.

"This situation we have seen this last week, with this horrific shooting, is a perfect example of that," Angles said.

The American Bail Association said Missouri's new policy is showing its holes in Alatorre's case.

"It's inconceivable he was released without having to post bail at all. If not for the court, he would still be behind bars where he belongs," said Jeff Clayton, executive director of the American Bail Association.

In return for his freedom, Alatorre was supposed to, among other things, show up at future court hearings.

Pretrial release is not a new idea.

"This is the way the federal system has worked, at least in the federal courts in the Kansas City area," Angles said.

The other consideration for Jackson County judges is the frequent overcrowding at the jail.

The Missouri Times reported that some state lawmakers are considering trying to change this policy next year.



State Senator To Introduce Legislation To Address “Major Flaws” In Unsecured Bail

October 14, 2019 - by Staff Writer



Republican Senator Colin Bonini, tomorrow is set to announce the introduction of legislation to repeal the bipartisan House Bill 204, which effected fundamental changes in bail law in 2018.

In a statement released on Tuesday Bonini said Major flaws became apparent shortly after the Delaware Supreme Court implemented new rules based on the bill.

House Bill 204 was intended to decrease the use of monetary bail while releasing more defendants from jail pending trial. In addition, judges were compelled to use a pretrial risk assessment tool, which, as a matter of course, recommended the release of all defendants pending trial unless a prosecutor or judge made a “special showing” that they should be required to post bail prior to release, said Bonini.

By January 2019, there were numerous reports of individuals being freed pending trial who would probably never have been released without putting up bail. Democrat Senator Bryan Townsend of Newark, one of the co-sponsors of HB 204, acknowledged that unforeseen problems had developed as a result of the legislation, including a number of “acts of criminality” stemming from assailants being released on unsecured bail, said Bonini. Townsend also indicated that there were numerous questions about the new law coming from both law enforcement, as well as members of the community.

Because of these negative developments, Senator Townsend introduced a resolution calling on the Delaware Supreme Court to alter the rules governing the release of defendants. While that resolution passed the Delaware legislature overwhelmingly in February, the state Supreme Court has not done anything since that time to assuage these concerns and has not changed the problematic rules implementing bail reform, according to Bonini.

We will have more on this developing story tomorrow.



Bail Reform Has Made Delaware A More Dangerous Place Says Bonini

October 15, 2019 - by Staff Writer



Delaware State Senator Colin Bonini along with Representative Steve Smith announced today that they were introducing legislation to repeal House Bill 204.

“The consequences of House Bill 204, along with a general shift in culture in our judiciary system, has been that many folks who are potentially dangerous are now being immediately released without any bail whatsoever”, said Bonini. What House Bill 204 did, in a nutshell, was completely revamp how we do bail and in my opinion, basically got rid of bail for potential offenders.

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At today's press conference Bonini gave several examples of well-known cases where violent offenders were released on no bond. [One example he gave was an instance where a man charged with pistol-whipping a woman before he shot at her. The man was later released on his own recognizance with no bond.](#) He was just let out immediately, which to me is just crazy, added Bonini.

We also get many stories from law enforcement. For example, folks who have been arrested for multiple drug-dealing charges, they have multiple bags, dozens, if not hundreds of bags of heroin on them and they are being released immediately, said Bonini.

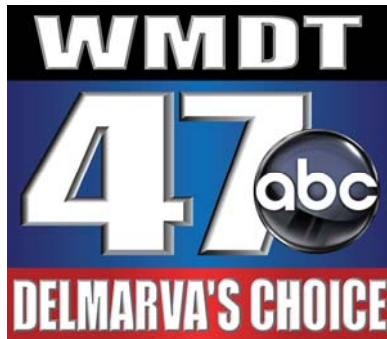
Also in attendance at the press conference was Middletown Chief of Police Robert Kracyla. Kracyla relayed a story in which his officers had arrested a man for domestic violence. His officers knew the offender and had dealt with him on numerous occasions. The offender was presented to the court and the judge was informed of the man's history. The man was literally on the street, released and on the street before the officers could even finish the arrest paperwork, according to Kracyla. Middletown officers were back at that same home less than six hours later for the same thing, domestic violence, said Kracyla.

So, the bottom line is House Bill 204 has made Delaware a more dangerous place, said Bonini. The situation prior to House Bill 204 was that we had a real opportunity to set bail. We had an opportunity in the interest of public safety to set bail high so that dangerous folks couldn't get out.

We have unfortunately defaulted to where we let everybody out now and don't hold anybody at all. The legislation discussed today in the press conference is to repeal House Bill 204 and to go back to a system where we had real cash bail. I think, more importantly, to start a discussion about where criminal justice reform has gone. In my opinion, it has gone too far, to the point where we have, quite frankly, started caring more about offenders than we do about victims. I think we've set a very dangerous precedent and our public policy needs to be more focused on victims, Siad Bonini.

We are hoping to repeal the bail repeal. In the process, we want to get back to much more of a common-sense system that would allow for those folks who represent a danger to the public to have their bail set appropriately.

To see some of the cases where defendants were let out on unsecured bound you can [visit here](#).



Del. lawmakers introduce bail reform legislation

October 15, 2019 by [Kyleigh Panetta](#)



DOVER, Del. – Some Delaware lawmakers are fighting for bail reform by repealing a bill that just went into effect last year. On Tuesday, Senator Colin Bonini and Representative Steve Smyk introduced legislation to repeal House Bill 204. They say the bill, which went into effect in 2018, has proven to be ineffective. 47 ABC spoke to some members of the law enforcement community who agree. But others believe repealing the bill would go against the principle “innocent until proven guilty”.

“The clerk at Wawa shouldn’t have to worry about being robbed by the same guy later that night because he was released after robbing him that night,” says Jeffrey Horvath, the executive director of the Delaware Police Chiefs’ Council. “One of the complaints I’ve heard since the new bail reform has come out is that a lot of people are being arrested for very serious offenses and very few of them are going to jail pending trial or not even being required to post a bond.”

This legislation is designed to fix what some lawmakers are calling flaws in the new system. “I’ve talked to numerous police chiefs in Kent and Sussex County who are not happy with this specifically the chief of Selbyville and chief of Dover,” says Horvath.

House Bill 204 was designed to decrease the use of monetary bail while releasing more defendants from jail who are awaiting trial. But critics say that hasn’t been the case. “My phone is inundated every night with \$500 bail calls, \$250 bail calls,” says Christina Brigandi, a bail bondsman for 1st Choice Bail Bonds.

Supporters say this new legislation would fix a loophole that House Bill 204 created which essentially let violent or repeat offenders back out onto the street. “When these people don’t return back to court it falls on our local police officers to be back out on the streets taking in capiases,” says Brigandi.

However, some supporters of HB 204 say it embodies the principle “innocent until proven guilty”. “Some people view a person getting arrested for an offense and then sitting in jail pending trial they are already being punished for something they haven’t been found guilty of,” says Horvath.

While critics may not support the new system, they tell 47 ABC there has to be a better way to go about bail reform. “I think the system can be tweaked where a lot of people can feel safer and people maybe that aren’t a threat to public safety won’t be sitting in jail for a pending crime just because they couldn’t come up with \$500,” says Horvath.

Supporters also tell 47 ABC repealing House Bill 204 would create more protections for victims who could be targeted more than once by the same person if they are let out on bail.

Lawmakers are urging residents to contact their representatives and let them know what they think about repealing House Bill 204.

TOP STORY

Bail reform in Delaware: has it gone too far?

Mark Fowser

Published Oct 15, 2019 at 6:15 pm | Updated Oct 15, 2019 at 6:18 pm



Legislative Hall, Dover
Photo: WDEL's Mark Fowser

Several state lawmakers said Tuesday it's time to try again with bail reform in Delaware.

The previous Delaware General Assembly approved measures that essentially tightened the requirements to justify holding someone on high cash bail. Judges received access to data and a risk assessment tool in making their determinations.

Critics said the result is a system under which potentially dangerous people are released with no bail whatsoever.

"There's no question in my mind that Delaware is more dangerous today than it was in the past," State Senator Colin Bonini (R- Dover South) said. "I think public safety has been compromised by the sort of 'let 'em out, let 'em all out, don't detain anybody' culture that we're creating."

At the time of the debate, Senator Bryan Townsend (D- Newark-Bear) said "We know the detrimental effect on public safety on an individual's future when they languish in

jail--not because they're a risk to the community-- but simply because they are not able to afford bail."

Tuesday, Townsend said some early confusion may have allowed some defendants to "walk" without being assigned bail, but the new system was having the desired effects.

"The changes have shown we are having fewer reoffenses, we're having fewer failures to appear for court proceedings, and we're doing all of that without having to spend as much money on pretrial detention," Townsend said. "We're able to spend money more on other law enforcement and public safety measures and victim services."

"It's unfortunate that some lawmakers are taking a few examples and trying to make it seem like the whole system is failing," Townsend added.

On the day of the vote in 2018, Bonini spoke out against it for several minutes - a statement he now describes as a "tantrum" in anticipation of the unintended consequences he said are now playing out.

"We've created a system where I think judges are afraid to try to remand people or set high bails for potentially dangerous folks," Bonini said.

"We are forgetting that it's not just the opportunity for someone to have assurance of appearing in court, but it's also for the protection of our victims," Representative Steve Smyk (R-Milton-Lewes) said. Smyk is also a retired Delaware State Trooper.

"We need to be concerned about victims, and we need to be concerned about public safety," Bonini said. "That's what this is all about."



Mark Fowser

Reporter - Anchor

Mark Fowser is a veteran journalist in Delaware.



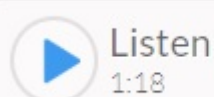
Some Republican state lawmakers back repeal of bail reform

By SARAH MUELLER • OCTOBER 15, 2019



State Sen. Colin Bonini

Some Republican state lawmakers are calling for a repeal of a law reforming Delaware's cash bail, saying it makes the state less safe.



It allows judges to set conditions other than posting money to secure release from jail before trial. It was signed by Gov. John Carney in January 2018.

State Sen. Colin Bonini voted against the measure. He said the law makes Delaware less safe and points to seven men who allegedly committed crimes after being released on bond. He argues cash bail makes it more likely serious offenders will be held until trial.

"If someone's been arrested for drug dealing four times and they're arrested with a whole bunch of heroin on them the fifth time, maybe that person's a

drug dealer," he said. "Just maybe. And maybe that person should have to at least put up bail to guarantee that that person comes back to court."

State Rep. Steve Symk, who is co-sponsoring Bonini's repeal bill, voted for bail reform last year, but says the policy isn't working.

But State Sen. Bryan Townsend, who sponsored the legislation, disagrees. He said the law now considers factors beyond the amount of money someone can pay in bail - such as the likelihood to re-offend or flee.

"Just because you have lots of money doesn't mean you should be able to buy your way out of jail," he said. "It should be whether you're a danger to the community or not, whether you're a flight risk or not."

A statement for the Delaware court system includes statistics comparing the percentages of defendants re-offending after being released pre-trial and showing up for court hearings. The data shows neither the bleak picture painted by Republicans or the rosy depiction painted by Democrats.

Preliminary state data information shows the failure to appear rate has increased slightly from 23 percent in 2018 to 24 percent in 2019. The percentage of defendants re-offending dropped slightly in the same time frame, from 22 percent to 21 percent. During that period, the number of pretrial detainees has dropped by 7 percent.

American Bail Coalition, a nonprofit comprised of bail bond companies, is also pushing for the law's repeal. But Bonini said it's purely a public safety issue.

A Delaware Department of Justice spokesman said repealing last year's bail reform bill at the behest of a bail bond industry group would be an unfortunate step backwards. The Office of Defender Services also opposes the repeal, as does the ACLU of Delaware.



New bail reform law puts public safety at risk, GOP legislators say

Oct 15th, 2019 · by [Matt Bittle](#)

DOVER — In 2018, lawmakers approved a bill reforming the state’s bail system and reducing the use of cash bail.

The measure was part of a multi-pronged approach to what its proponents championed as criminal justice reform, but opponents warned it would lead to greater public safety concerns.

Now, more than 10 months after the legislation went into effect, some of the lawmakers who voted against it are sounding the alarm again. They say many of the fears raised during the legislative debate have come to pass.

Although the General Assembly is on break until January, several Republican lawmakers on Tuesday announced plans to attempt to repeal the bail proposal, House Bill 204.

“We are creating more victims in Delaware,” Dover-area Sen. Colin Bonini, the main sponsor of the measure, said in a news conference. “It is a tremendous concern. ... The system was not perfect prior to House Bill 204, right? No question. But prior to that, we at least had an opportunity to set bail for those who needed it.

“And the current situation, at least the way it’s being interpreted by the judiciary, the current situation is folks are simply being released.

“Somebody called it a get-out-of-jail free card. It’s not even that. It’s a not-go-to-jail card.”

House Bill 204 was approved by the Senate in January 2018, seven months after it passed the House, with some Republican support. A product of years of effort by the courts, the Department of Justice, law enforcement, the Delaware Center for Justice and others, the bill was intended to ensure dangerous individuals stay behind bars while preventing low-level offenders from remaining in jail as Chief Magistrate Alan Davis told the Senate during the floor debate, “for want of \$500.”



Sen. Colin Bonini speaks at the news conference on Tuesday.

Under the law, judges utilize a new risk assessment method to evaluate criminals and how likely they are to reoffend or skip a court hearing. The assessment, based on state data and designed to be predictive, analyzes more than 2,000 factors. Using an algorithm of sorts, with scores based on items such as prior offenses, the assessment offers a non-binding recommendation.

Previously, judges used conversations with offenders, the seriousness of the crime and violators' criminal histories to determine if they should be granted bail or set free with no monetary conditions prior to trial. If a judge concluded that bail should be given, he or she then set a dollar amount — one that was, according to Judge Davis, often arbitrary.

“The number is magic, quite frankly,” the judge, who heads the Justice of the Peace Court, testified last year. “I do it all the time and I can’t tell you how I do it. I just look at the person that walks in and I kind of get a guess for how much their resources are and I use that as a guideline and I say this is the number. It’s a guess.”

While judges had the discretion to release someone, Judge Davis told senators many felt pressure to impose some type of bail. As a result, poorer individuals were in many cases kept in jail until trial, while others who committed identical crimes but had a little bit more money in their bank accounts could simply walk free.

According to the courts, the failure-to-appear rate has risen by 1 percent from the first three months of 2018 to January, February and March of this year, while the rate for new criminal activity has declined 1 percent. The pretrial detainee population, meanwhile, is 7 percent smaller.

Lawmakers and police officers said Tuesday there are numerous instances of a suspect being arrested by cops and set free by a judge — and then committing another serious offense, if not the same crime, within days or even hours.

“Victims are victims, and we in this community are tired of people being victimized and the ones that victimize them not being held accountable for their actions. That’s all we ask,” Jeffrey Horvath, executive director of the Delaware Police Chiefs’ Council, said.

Middletown Police Chief Robert Kracyla relayed a story of his officers arresting the same person for domestic violence twice in one night, only to see a judge let the suspect go with no bail both times.

“My officers are literally doing paperwork on their arrest while (the suspect is) back at the house reoffending,” he said.

Several speakers said they do not believe the issue is political, with Sen. Bonini noting he expects the measure to get some Democratic support.

The primary responsibility of the General Assembly is public safety, a duty it is currently failing to meet, Sen. Bonini told the audience of reporters, bail bondsmen, police and others.

This isn’t the first time lawmakers have expressed concerns about the implementation of the changes.

The legislature in January approved a resolution urging the judiciary to convene “criminal justice stakeholders to finalize a court rule focused on balancing continued efforts to release defendants who should not be held pre-trial and to protect the public from defendants accused of violent crimes.”

The main sponsor of that proposal, Sen. Bryan Townsend, a Newark Democrat, was also one of the key backers of the House Bill 204. He said earlier this year the resolution stemmed from several “acts of criminality early in the new year that have resulted in certain bail decisions being rendered or essentially the assailant being released on unsecured bail,” prompting many questions from law enforcement and members of the community.”

On Tuesday he fired back against claims House Bill 204 has made the state less safe.

Those early issues have been ironed out, Sen. Townsend insisted, and bail reform has been beneficial to the state.

At its core, bail should be about protecting public safety and guaranteeing the accused shows up in court, he argued. Wealthy individuals should not necessarily be able to buy themselves out of jail, just as those without many resources should not be forced to stay in a cell simply because they can’t afford to post bail, Sen. Townsend said.

While bail currently can only be denied for murder charges, Sen. Townsend noted several of the supporters of the effort to repeal House Bill 204 opposed a measure that would have expanded what offenses bail can be withheld for.

That legislation, which failed in the Senate in 2018, would have allowed denial of bail for non-capital cases when it was determined “no condition or combination of conditions other than detention will reasonably assure the person’s appearance in court when required, or protect the safety of any other persons or the community, or prevent the person from obstructing or attempting to obstruct justice.”

Lawmakers who support undoing bail reform but did not back the pretrial detention measure, Sen. Townsend said, are hypocrites and are missing the point of bail.

“For those of us who are interested in public safety and not political theater, we have to stay vigilant about taking a long, hard look at what is actually happening,” he said.

Some of the people raising concerns about the changes may not be doing so in good faith, he argued, pointing to bail bondsmen as one group of people with a vested interest in undoing bail reform.

In a statement, the judiciary said it will continue meeting with advocates and others to look at possible improvements to the process and urged Delawareans not to “lose sight of the fact that this reform represents an important opportunity to improve the quality of justice in our state.”

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Delaware state senator seeks to repeal cash bail changes

By Zoë Read October 16, 2019



A person wearing an ankle monitor. (Rich Pedroncelli/AP Photo, file)

A Delaware senator wants to repeal legislation passed in early 2018 that aimed to address disparities in the state's cash bail system.

State Sen. Colin Bonini, R-Dover, said as a result of the bill, violent offenders who should be detained are being released before going on trial and are committing additional crimes.

“The way it’s being interpreted is release at any cost — and prior to that, we at least had a fair chance to set bonds appropriately for those folks we had concerns about,” he said.

“We have to focus more on the victims and less on the offenders, and I think we’ve gotten a little too far away from that.”

The reform bill directed judges to consider alternatives to cash bail, such as travel restrictions, check-ins with court officers or ankle bracelets.

When determining whether to use cash bail or an alternative, judges are encouraged to use a risk assessment tool that estimates a defendant's likelihood of skipping a court hearing, or committing another crime.

The new rules were meant to address a disparity in the cash bail system causing non-violent offenders to be detained pretrial simply because they can't afford bail. Criminal justice reform advocates say unnecessary detainment could cost a defendant their job, or pressure them to plead guilty.

Meanwhile, violent offenders with financial means could make bail and potentially reoffend, they argue.

"We do better for victims when the criminal justice system works, we do better for victims when we have more resources to provide support, and we can have those kinds of resources by avoiding throwing people in jail before trial who are not a risk to reoffend and are not at risk to flee," said state Sen. Bryan Townsend, D-Newark, one of the original reform bill's sponsors.

After the bill passed, however, some offenders released without bail did commit additional crimes.

The General Assembly passed a resolution sponsored by Townsend that urged the judiciary to work with stakeholders to ensure the new rules were understood and applied properly.

Early data shows while the number of pre-trial detainees has dropped 7%, the failure to appear and new crimes committed rates have remained fairly stagnant, said Sean O'Sullivan, a spokesman for Delaware Courts.

New criminal activity has dropped from 22% to 21%, while failure to appear has increased by just 1%.

Still, Bonini, and some of his Republican colleagues say they don't believe the resolution worked, and have drafted legislation to repeal the bill.

"We have stacks of incidents where folks have done things that should have required bail or should have been remanded," he said.

The heads of the Delaware Police Chief's Council and the Delaware Fraternal Order of Police also support Bonini's repeal proposal.

Middletown Police Chief Robert Kracyla spoke in support of Bonini's plan during a Dover press conference on Tuesday. He recalled a time when his officers arrested a domestic violence suspect twice in one night.

“We knew that offender very well, we knew he’d be a repeat offender, we presented that to the court,” he said. “Six hours later we’re responding to the exact same residence, same thing, domestic violence, we arrest that suspect, and the same judge who heard it six hours earlier is hearing the same thing and that particular subject gets released again.”

Townsend argued the incidents Bonini and his supporters point to occurred within several weeks of the legislation being signed into law. He said since his resolution, improvements have been made.

“We have to be careful of looking at one or two examples and acting like that means the whole system is broken,” he said.

“If there are ways of improving, let’s improve it, but it’s a different matter entirely for Sen. Bonini to announce legislation that would gut a data driven approach to criminal justice that has proven to keep the community safer at a lower cost.”

Delaware Courts spokesman Sean O’Sullivan said judges have the flexibility to set a high cash bail for a “signal crime” — including violent crimes, sex crimes, gun crimes, and domestic violence crimes.

He said the Courts were able to resolve initial issues that arose by meeting with representatives from the criminal justice system, law enforcement and corrections.

“Changes were proposed to address issues related to domestic violence concerns and to identify additional crimes that should trigger heightened bail standards, including the Chief Justice’s suggestion of potential revisions to the pretrial assessment matrix used by the court in making bail decisions,” O’Sullivan said.

Over the next few weeks, data will be reviewed to determine any necessary changes, and make final recommendations for the Supreme Court’s consideration.

“We remain committed to working with all stakeholders as we implement this important reform,” O’Sullivan said. “We should not lose sight of the fact that this reform represents an important opportunity to improve the quality of justice in our state.”

Brendan O’Neill, Chief Defender at Delaware’s Office of Defense Services, said a repeal would be a step backwards, and “will punish those who have the least.”

“Freedom should not be based on a person’s ability to pay,” he said in an email statement.

A spokesman for Attorney General Kathy Jennings echoed those thoughts and said it’s part of the discussion to make improvements: “A pretrial detention system based on danger and risk of flight is far better than our current cash bail construct which penalizes the poor and rewards the

rich ... repealing SB 204 at the behest of a bail bond industry group would be an unfortunate step backwards.”

The Delaware General Assembly is currently in recess until early January.



Bail bond group, Bonini push for repeal of reform legislation

By **Delaware Business Now** -October 16, 2019

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An association representing the bail bond industry is aiding an effort by a Republican state senator to repeal a reform measure.

Colin Boni held a press conference on Tuesday outlining his plans to repeal House Bill 204. Bonini claims the bill has allowed dangerous defendants to quickly ended up on the street.

A spokesman for the American Bail Coalition stated that “HB 204 was a bipartisan bill, which, as it turned out, both parties hated the results which emerged from its passage.”

The bill was aimed at those charged with non-violent offenses, who were held in jail, due to a lack of funds.

State Sen. Bryan Townsend, D (Newark-Bear), sponsor of the legislation, told WDEL that confusion over implementing the bill led to some problems but added that outright repeal was not a solution.

“So, the bottom line is House Bill 204 has made Delaware a more dangerous place. The situation prior to House Bill 204 was that we had a real opportunity to set bail. We had an opportunity in the interest of public safety to set bail high so that dangerous folks couldn’t get out,” a transcript from the bail industry group that quoted Bonini stated. The transcript was sent by a public relations firm hired by the coalition.

“In my opinion, it has gone too far, to the point where we have, quite frankly, started caring more about offenders than we do about victims. I think we’ve set

a very dangerous precedent and our public policy needs to be more focused on victims,” Bonini stated.

He went on to show examples of violent suspects with previous prior offenses quickly being released.

Bonini, a former candidate for Delaware governor, would face an uphill fight in repealing the bill barring bipartisan sponsorship. Democrats control both houses and the governor’s office.

It is possible that the bill could be used as a talking point in 2020 in claiming legislators are soft on crime.

Delaware Republicans Propose Repealing 2018 Bail Reform Law

Posted: Oct 15, 2019 4:05 PM PDT

Updated: Oct 16, 2019 4:27 AM PDT

By Tom Lehman



DOVER, Del.- Republican lawmakers in Delaware have proposed rolling back changes from a 2018 bail reform law, citing a number of cases involving offenders they say have been charged with serious crimes after being arrested and released without bail on prior offenses.

A planned Senate bill would repeal the changes to Delaware's bail statute under the law introduced and passed in 2018 as House Bill 204, a piece of legislation proposed by supporters with the intent of reducing courts' reliance on using cash bail and other monetary measures to ensure defendants show up for trial.

Sen. Colin Bonini (R-Magnolia) and supporters of the legislation said in a Monday news conference their as-of-yet-unnumbered Senate bill was prompted by incidents across the state involving people being charged with a serious and sometimes violent crime but then released on their own recognizance without bail, only to face a subsequent arrest.

Among those incidents was the June arrest of Nathaniel Hampton. Dover police said in a news release Hampton was charged with gun and drug offenses but was out on unsecured bond at the time following a prior arrest in January. Authorities said Hampton in January had been arrested after he pistol-whipped a woman in the head and nearly shot her.

"We are creating more victims in Delaware," he said.

Bonini's proposal would repeal a requirement that judges consider the results of a pretrial risk assessment before setting bail and conditions of release. The assessment is based on a matrix implemented by Delaware courts that considers things like a defendant's criminal history and other factors to determine the risk factor associated with that person's release.

"We are letting people out without bail when a lot of those people probably should have to post bail or potentially be retained because they're potentially dangerous and I think there are too many people being released," he said in an interview.

The planned legislation has the backing of leaders from numerous law enforcement agencies and people involved in the bail bond industry.

Fred Calhoun, president of the Delaware Fraternal Order of Police, said law enforcement officers across the state are frustrated because victims of crimes do not feel safe after a suspect's arrest.

"When we go out there, we try to do the right thing and then these things go south and this person is released for whatever reason with no real explanation to the victim. That's a problem," he said.

A draft copy of the legislation made available on Tuesday did not show any Democratic lawmakers as co-sponsors of the bill.

Rep. Sean Lynn (D-Dover) said he would be opposed to the legislation and believes the bail reform law has benefited people who have been charged with minor crimes and cannot afford bail.

"What you're not seeing is the dozens and hundreds of people who are not out on bail and are able to maintain their family and hold down jobs and avoid the sort-of-economic death sentence that imperils poor people who are affected by cash bail," he said.

THE CRIME REPORT
YOUR CRIMINAL JUSTICE NETWORK

Houston Bail Reform Gets Mostly Praise at Hearing

By Crime and Justice News | 18 hours ago

A proposal to end cash bail for most misdemeanor arrestees in Houston emerged seemingly unscathed from a fairness hearing Monday, despite concerns from Texas Attorney General Ken Paxton that it will give a free pass to undocumented immigrants, [Courthouse News Service reports](#).

Hailed as a guidepost for reforms across the U.S., the settlement hearing drew influential critics: Harris County District Attorney Kim Ogg, three law enforcement unions and Paxton's office. Houston Police Officers' Union attorney Mary Nan Huffman gave a lurid example of how the settlement could endanger the public by mandating that misdemeanor arrestees be released on personal recognizance bonds, with no upfront fee of more than \$100.

Huffman said a woman named Brittney was walking her baby in a stroller and noticed a man in a red truck kept driving by her. She got home, put the baby down for a nap and started folding laundry on her living room couch. Brittney looked out her window into the backyard and the man in the red truck was staring at her, holding a knife in one hand and his genitals in the

other. “Without a bond hearing, no one would know his criminal history, how he’s committed rapes and been in and out of prison,” Huffman said. She said the proposed settlement, which has been preliminary approved by U.S. District Judge Lee Rosenthal, puts police at risk because when criminals reoffend and go on the lam, police may be the first people to encounter them. The deal “caters to criminals,” she said.

Welcome to Coffeyville, Kansas, where the judge has no law degree, debt collectors get a cut of the bail, and Americans — and liberty — disappear in the pursuit of medical debt collection.



AMBULANCE, JUDGE, JAIL

When Medical Debt Collectors Decide Who Gets Arrested

By Lizzie Presser Photography by Edmund D. Fountain October 16, 2019

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for ProPublica's [Big Story](#) newsletter to receive stories like this one in your inbox as soon as they are published.

ON THE LAST TUESDAY of July, Tres Biggs stepped into the courthouse in Coffeyville, Kansas, for medical debt collection day, a monthly ritual in this quiet city of 9,000, just over the Oklahoma border. He was one of 90 people who had been summoned, sued by the local hospital, or doctors, or an ambulance service over unpaid bills. Some wore eye patches and bandages; others limped to their seats by the wood-paneled walls. Biggs, who is 41, had to take a day off from work to be there. He knew from experience that if he didn't show up, he could be put in jail.

Before the morning's hearing, he listened as defendants traded stories. One woman recalled how, at four months pregnant, she had reported a money order scam to her local sheriff's office only to discover that she had a warrant; she was arrested on the spot. A radiologist had sued her over a \$230 bill, and she'd missed one hearing too many. Another woman said she watched, a decade ago, as a deputy came to the door for her diabetic aunt and took her to jail in her final years of life. Now here she was, dealing with her own debt, trying to head off the same fate.

Biggs, who is tall and broad-shouldered, with sun-scorched skin and bright hazel eyes, looked up as defendants talked, but he was embarrassed to say much. His court dates had begun after his son developed leukemia, and they'd picked up when his wife started having seizures. He, too, had been arrested because of medical debt. It had happened more than once.

Judge David Casement entered the courtroom, a black robe swaying over his cowboy boots and silversmithed belt buckle. He is a cattle rancher who was appointed a magistrate judge, though he'd never taken a course in law. Judges don't need a law degree in Kansas, or many other states, to preside over cases like these. Casement asked the defendants to take an oath and confirmed that the newcomers confessed to their debt. A key purpose of the hearing, though, was for patients to face debt collectors. "They want to talk to you about trying to set up a payment plan, and after you talk with them, you are free to go," he told the debtors. Then, he left the room.

The first collector of the day was also the most notorious: Michael Hassenplug, a private attorney representing doctors and ambulance services. Every three months, Hassenplug called the same nonpaying defendants to court to list what they earned and what they owned — to testify, quite often, to their poverty. It gave him a sense of his options: to set up a payment plan, to garnish wages or bank accounts, to put a lien on a property. It was called a "debtor's exam."

If a debtor missed an exam, the judge typically issued a citation of contempt, a charge for disobeying an order of the court, which in this case was to appear. If the debtor missed a hearing on contempt, Hassenplug would ask the judge for a bench warrant. As long as the defendant had been properly served, the judge's answer was always yes. In practice, this system has made Hassenplug and other collectors the real arbiters of who gets arrested and who is shown mercy. If debtors can post bail, the judge almost always applies the money to the debt. Hassenplug, like any collector working on commission, gets a cut of the cash he brings in.



Crystal Dyke with her husband and two kids outside their home in Leroy, Kansas. She was arrested when she was pregnant because she missed hearings involving a \$230 radiologist bill.

Across the country, thousands of people are jailed each year for failing to appear in court for unpaid bills, in arrangements set up much like this one. The practice spread in the wake of the recession as collectors found judges willing to use their broad powers of contempt to wield the threat of arrest. Judges have issued warrants for people who owe money to landlords and payday lenders, who never paid off furniture, or day care fees, or federal student loans. Some debtors who have been arrested owed as little as \$28.

More than half of the debt in collections stems from medical care, which, unlike most other debt, is often taken on without a choice or an understanding of the costs. Since the Affordable Care Act of 2010, prices for medical services have ballooned; insurers have nearly tripled deductibles — the amount a person pays before their coverage kicks in — and raised premiums and copays, as well. As a result, tens of millions of people without adequate coverage are expected to pay larger portions of their rising bills.

The sickest patients are often the most indebted, and they're not exempt from arrest. In Indiana, a cancer patient was hauled away from home in her pajamas in front of her three children; too

weak to climb the stairs to the women's area of the jail, she spent the night in a men's mental health unit where an inmate smeared feces on the wall. In Utah, a man who had ignored orders to appear over an unpaid ambulance bill told friends he would rather die than go to jail; the day he was arrested, he snuck poison into the cell and ended his life.

In jurisdictions with lax laws and willing judges, jail is the logical endpoint of a system that has automated the steps from high bills to debt to court, and that has given collectors power that is often unchecked. I spent several weeks this summer in Coffeyville, reviewing court files, talking to dozens of patients and interviewing those who had sued them. Though the district does not track how many of these cases end in arrest, I found more than 30 warrants issued against medical debt defendants. At least 11 people were jailed in the past year alone.

With hardly any oversight, even by the presiding judge, collection attorneys have turned this courtroom into a government-sanctioned shakedown of the uninsured and underinsured, where the leverage is the debtors' liberty.



The courtroom where Michael Hassenplug and other collectors administer “debtor’s exams.”

SEATED AT THE FRONT of the courtroom, Hassenplug zipped open his leather binder and uncapped his fountain pen. He is stout, with a pinkish nose and a helmet of salt and pepper hair. His opening case this Tuesday involved 28-year-old Kenneth Maggard, who owed more than \$2,000, including interest and court fees, for a 40-mile ambulance ride last year. Maggard had downed most of a bottle of Purple Power Industrial Strength Cleaner, along with some 3M Super Duty Rubbing Compound, “to end it all.” His sister had called 911.

Maggard took his seat. He had cropped red hair, pouchy cheeks and mud-caked sneakers. “The welfare patients are the most demanding, difficult patients on God’s earth,” Hassenplug told me, with Maggard listening, before launching into his interrogation: *Are you working?* No. *Are you on disability?* He was diagnosed with schizoaffective disorder, bipolar type, and anxiety. *Do you have a car?* No. *Anyone owe you money you can collect?* I wish.

They had been here before, and they both knew Maggard’s disability checks were protected from collections. Hassenplug set down his pen. “Between you and me,” he asked, “you’re never going to pay this bill, are you?”

“No, never,” Maggard said. “If I had the money, I’d pay it.”

Hassenplug replied, “Well, this will end when one of us dies.”

Though debt collection filings are soaring in parts of America, Hassenplug speaks with pride about how he discovered their full potential in Coffeyville long before. A transplant from Kansas City, he was a self-dubbed “four-star fuck-up” who worked his way through law school. He moved to Coffeyville to practice in 1980 and soon earned a reputation as a hard ass. He saw that his firm, Becker, Hildreth, Eastman & Gossard, hadn’t capitalized on its collections cases. The lawyers didn’t demand sufficient payments, and they rarely followed up on litigation, he said. Where other attorneys saw petty work, Hassenplug saw opportunity.



Kenneth Maggard at his home. “Blaze,” painted below, is his son’s name.

Hassenplug started collecting for doctors, dentists and veterinarians, but also banks and lumber yards and cities. He recognized that medical providers weren’t being compensated for their services, and he was maddened by a “welfare mentality,” as he called it, that allowed patients to dodge bills. “Their attitude a lot of times is, ‘I’m a single mom and ... I’m disabled and,’ and the ‘and’ means ‘the rules don’t apply to me.’ I think the rules apply to everybody,” he told me.

He logged his cases in a computer to track them. First with the firm and later in his own practice, he took debtors to court, and he won nearly every time; in about 90% of cases nationally, collectors automatically win when defendants don’t appear or contest the case. Hassenplug didn’t need to accept \$10 monthly payments; he could ask for more, or, in some cases, even garnish a quarter of a debtor’s wages. His fee was, and often still is, one-third of what he collects. He asked the court to summon defendants, over and over again. It was the judge’s contempt authority that backed him, he said. “It’s the only way you can get them into court.” The power of contempt was originally the power of kings. Under early English rule, monarchs were considered vicars of God, and disobeying them was equivalent to committing a sin. Over time, that contempt authority spread to English courts, and ultimately to American courts, which use it to encourage compliance with the judicial system. There is no law requiring that a court use civil contempt when an order isn’t followed, but judges in the U.S. can choose to, whether it’s to force a defendant to pay child support, for example, or show up at a hearing. A person jailed for defying a court order is generally released when they comply.

When Casement took the bench in 1987, after passing a self-study exam, he didn’t know much legalese — he had never been in a courtroom. But attorneys taught him early on that the power of contempt was available to him to punish people who ignored his orders. At first, Casement could see himself in the defendants. “I was a much more pro-debtor aligned judge, much more sympathetic, much less inclined to do anything that I thought would burden them,” he told me. “And over the years, I’ve gradually moved to the other side of the fulcrum. I still consider myself very much in the middle, and I don’t know if I am or not.”

Once a bustling industrial hub, Coffeyville has a poverty rate that is double the national average, and its county ranks among the least healthy in Kansas. Its red-bricked downtown is lined with empty storefronts — former department stores, restaurants and shops. Its signature hotel is now used for low-income housing. “The two growth industries in Coffeyville,” Hassenplug likes to say, “are health care and funerals.”



A shuttered motel in Coffeyville. The town, once a bustling industrial hub, now has a poverty rate more than double the national average.

Coffeyville Regional Medical Center is the only hospital within a 40-mile radius, and it reported \$1.5 million in uncollectible patient debt in 2017. A nonprofit run in a city-owned building, the hospital accounts for the vast majority of medical debt lawsuits in the county — about 2,000 in the past five years. It also accounts for the majority of related warrants. Account Recovery Specialists Inc. handles its collections, and it does so for hospitals in most Kansas counties. Though the hospitals can direct ARSI and its contracted attorneys to tell judges not to issue warrants, hardly any have. The Coffeyville hospital’s attorney, Doug Bell, said that its only motivation is to continue to serve the area, and that Kansas’ decision to not expand Medicaid under the Affordable Care Act has had a “dramatic effect on the economic liability of small rural hospitals.”

Three nearby hospitals in this rural region have closed in the past several years, meaning ambulances make more trips. A half-hour from Coffeyville, Independence runs its ambulance service at about a \$300,000 annual loss. Its bills were at the root of four arrests this year alone. Derek Dustman, who is 36 and works odd jobs, had been driving a four-wheeler when he was hit by a car and rushed to the hospital. Though he was sued for not paying his \$818 ambulance bill, he didn’t have a license to drive to the courthouse. This spring, he spent two nights in jail. “I never in a million years thought that this would end with jail time,” he told me.

For years, Hassenplug has requested that the judge issue warrants on the ambulance service’s behalf. When I asked Lacey Lies, the city’s director of finance, if she ever considered telling him not to resort to bench warrants, she was puzzled. “You’re saying an attorney with no teeth?”



A city ambulance in Independence, Kansas. Hassenplug represents the service against its debtors.

THE FIRST TIME Tres Biggs was arrested, in 2008, he was dove hunting in a grove outside Coffeyville. It had been just a year since his 6-year-old son Lane was diagnosed with leukemia, and Biggs watched him breathe in the fresh air, seated on a haybale under an orange sky. When a game warden came through to check hunting permits, Biggs' friends scattered and hid. He wasn't the running type, and he took Lane by the hand. The warden ran Biggs' license. There was a warrant out for his arrest. Biggs asked a friend to take Lane home and crouched into the warden's truck, scouring his memory for some misstep.

The last few years had been a blur. His wife, Heather, had quit her job as a babysitter to care for their son. Then, she got sick. Some days, she passed out or felt so dizzy she couldn't leave her bed. Her doctors didn't know if the attacks were linked to her heart condition, in which blood flowed backward through a valve. To provide for his wife, son and two other kids, Biggs worked two jobs, at a lumber yard and on construction sites. He didn't know when he would have had time to commit a crime. He'd never been to jail. As he stared out the window at the rolling hills, his face began to sweat. He felt his skin tighten around him and wondered if he would be sick. The warrant, he learned at the jailhouse, was for failure to appear in court for an unpaid hospital bill. Coffeyville Regional Medical Center had sued him in 2006 for \$2,146, after one of Heather's emergency visits; neither of his jobs offered health insurance. In the shuffle of 70-hour workweeks and Lane's chemotherapy, he had missed two consecutive court dates. He was fingerprinted, photographed, made to strip and told to brace himself for a tub of delousing liquid. His bail was set at \$500 cash; he had about \$50 to his name.



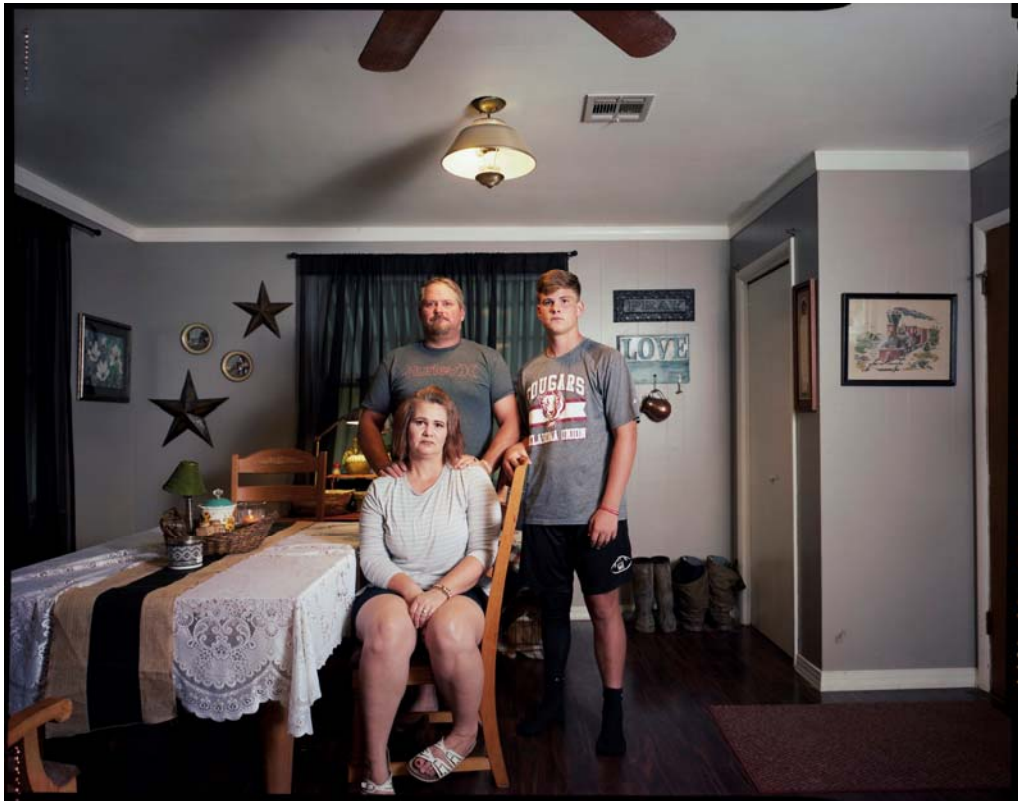
Coffeyville Regional Medical Center is the only hospital within a 40-mile radius.

His friend bailed him out the next morning, but at the bond hearing, the judge granted the \$500, minus court fees, to the hospital. Biggs compensated his friend with a motorboat that a client had given him in exchange for a hunting dog. But it wasn't long before the family received a new summons. In 2009, a radiologist represented by Hassenplug sued them for \$380.

Some court hearings fell on days when Lane had treatment, at a hospital in Tulsa, an hour south. Heather refused to postpone his care. Lane's condition was improving — in a year, he would be cancer-free — and his dirty blond hair was sprouting again. Her health, though, had taken a turn. She began having weekly seizures, waking up on the floor, confused about where their Christmas tree had gone or why a red Catahoula puppy was skidding around their ranch house. Her doctors concluded she had Lyme disease, which was affecting her nervous system and wiping her short-term memory. Each time she woke up, she repeated: "Don't take me to the hospital."

Biggs was still on the hook for the bill that had landed him in jail; bail had covered only part of it, and the rest was growing with 12% annual interest. The hospital had garnished his wages, and the radiologist had garnished his bank account, seizing contributions that his family had raised for Lane's care. Living on \$25,000 a year, Biggs couldn't afford to buy insurance. His family was on food stamps but didn't qualify for Medicaid, a federal insurance program for people in poverty. Other states were about to expand it to cover the working poor, but not Kansas, which limited it, for families of his size, to those who earned under \$12,000. Like millions of others across America, he and Heather fell into a coverage gap.

By 2012, the Biggs family had accrued more than \$70,000 in medical debt, which it owed to Coffeyville Regional Medical Center and other hospitals, pediatricians and neurologists. Some forgave it; others set up lenient payment plans. Coffeyville's was the only hospital that sued. The doctors who took them to court were represented by Hassenplug.



Tres Biggs with his wife, Heather, and son, Lane, at their home.

Biggs began to panic around police, haunted by the fear that at any moment, he might be locked up. That spring, outside the Woodshed gas station, he spotted a sheriff's deputy who was also an old friend. To shake off his dread, he asked the friend to run his license. The deputy found another warrant, signed by Casement, involving the \$380 radiologist's bill. "You're not really going to take me in, right?" Biggs remembers asking. The deputy said he had no choice. Bail, as usual, was set at \$500.

The family filed for bankruptcy, a short-term fix that erased their debt but burdened them with legal fees. They lost their home and started renting. Biggs ultimately got a job that offered insurance, as a rancher, covered by Blue Cross Blue Shield. But it required Biggs to pay the first \$5,000 before it covered medical expenses. When chest pain hit him as he worked cattle in the heat, and he began vomiting, the only nearby hospital was Coffeyville's. In 2017, the hospital sued again. It was the family's sixth lawsuit for medical debt.

Sitting in Casement's courtroom this July, Biggs calculated that he was losing about \$120 by taking time off from work to attend this hearing. "I haven't received a bill," he told me, slouched over his turquoise shorts. "The only thing I received was this summons." Around noon, he finally sat down with an ARSI representative, who explained that the underlying bill had been garnished from his wages, but he still owed \$328 in interest and court fees. He had another couple thousand dollars in collections for separate bills he hadn't paid, for which he hadn't yet been sued. He said the most he could afford to pay, every two weeks, was \$12.50.

BEFORE THE END of the Tuesday docket, Casement returned to the courtroom to read off the names of the hospital's defendants. Five had failed to show up for contempt citations, to give their reasons for missing their debtor's exams. Casement saw that two of the no-shows hadn't been properly notified of the hearing, so attorneys would need to try to reach them again. The judge read the names of the other three defendants and told the hospital's collections lawyer, "That would be a bench warrant if you want it."

The following morning, I was reading court files in the clerks' office when Christa Strickland arrived at 10:20 in flip-flops and black leggings, her caramel hair wrapped in a bun atop her head. She ran her finger down a docket on the bulletin board and asked why her case wasn't listed. When the clerk pulled up her file, she told Strickland that her contempt hearing had been on Tuesday and she was one day late. "You need to call the law office of Amber Brehm," the clerk insisted, referring to ARSI's contracted lawyer, who represents the hospital. She handed over the phone number.

Strickland sat on a hard bench and took out her cellphone. She had saved the hearing in the wrong day on her calendar, but she had taken the day off from work and wanted to clear up the

misunderstanding. “I had a court date,” she said when a man answered at the law office. “I thought it was today but apparently it was yesterday. I’m just needing to see if I can set something up?”

“By not appearing at that, the court would be in the process of issuing a bench warrant,” he said. “What does that mean?” Strickland asked, shaking her head.

“You don’t know what a bench warrant means?” he asked. “That means you will be arrested and taken to jail and ordered to post bond.”

“Oh my God.” Strickland squeezed her eyes shut, wetness smudging her mascara. She poked at her cheek with her index finger. Her father was a preacher. She’d never been in trouble with the law. She had made a mistake, she tried to explain. She wanted to make an arrangement to pay.



The Coffeyville courthouse.

The man on the phone told her that it might take a couple weeks before the court processed her warrant paperwork, which the law office had not yet submitted. Once the judge issued the warrant, she could turn herself in. Strickland wanted to scream, *I’ll pay the bill, don’t make me go to jail!* but she didn’t have the money. Instead, she looked at the ceiling and asked: “Turn myself into the court? The police station?”

“The Sheriff’s Department,” he responded.

“They’re here in the same building,” she said. “I won’t leave here until I get this figured out. Thank you!”

She hung up. *Prick*, she muttered to herself. *You’re going to talk to me like I’m a freaking idiot? That’s not okay. Educate me. The court has to process it?* Her mind kept moving in circles. She herself worked in debt collection, for an auto title lending company. She understood that everyone was doing their job. Still, she couldn’t grasp how this bill had gotten this far.

Before she had taken this position, during her second pregnancy, her right breast had developed a chronic infection. In 2008, she was uninsured, needed surgery to remove the swollen abscess and ran up a \$2,514 bill. More than a decade later, she was still chipping away at a balance that, because of interest and court fees, had more than doubled to \$5,736. She had fallen behind on her monthly payment plan and now worried that her booking photo would be on Mugshot Monday, a Facebook album run by the Police Department. She imagined what she would tell her boss: *I went to jail ... because I missed a court date ... for medical bills.* It sounded absurd.

She spotted a sheriff's deputy in a bulletproof vest with a name tag that said Bishop and a pistol on his hip. "Hey!" she called out, explaining her phone call and how the man said something about a warrant and turning herself in. Bishop radioed into dispatch and smiled with an update: "There's no warrant in the system yet," he told her.

"Yet!" Strickland replied, deflating his look of reassurance. "That's what I'm worrying about." "You better give Amber a call back," Bishop said.

When I asked ARSI about how attorneys decide to request warrants, Joshua Shea, who is general counsel, told me that they don't. The judge can choose to issue one if court orders are not followed, he said. But Casement said the opposite, telling me that he gave the choice to the attorneys. "I'm not ordering a bench warrant. My decision is to give them that option," Casement told me. "Whether they exercise it is up to them, but they have my blessing if that's what they want to do."

Shea sent me an eight-page email to make clear, in large part, that ARSI, as a collection agency, has no involvement in the courts, and that Brehm is a lawyer whom the agency contractually employs and who represents the hospital directly. Her email address, though, has an ARSI domain, and her resume lists her as ARSI's director of legal. Brehm said that court hearings aren't the only option for debtors, who can call her instead and answer questions under oath. Shea said nobody — not the hospital, ARSI, Brehm or the court — uses the threat of jail to "extract payment."

Strickland reached Brehm after several days, and the attorney agreed to a new hearing. On Aug. 13, when they met in court, Brehm sat at the front of the room.

"We're giving you a second chance on that citation; just to try to take care of this without there having to be any sort of bench warrant," the lawyer said. "I want to make sure that we're all on the same page about the consequences of not coming into court when the order has been issued." Strickland nodded.

"Again, if you set a payment plan and keep it," Brehm said, "we won't have to worry about that."



The jail in Independence, where many debtors in the county are booked.

IN SOME COURTHOUSES, like Coffeyville's, collection attorneys are not only invited to decide when warrants are issued, but they can also shape how law is applied. Recently, Hassenplug came to believe that debtors were only attending every other hearing in a scheme to avoid jail, and he raised his concern with the judge. He suggested that the judge could fix this by charging extra legal fees; Casement wrote a new policy explaining that anyone who missed two debtor's exam hearings without a good reason would be ordered to pay an extra \$50 to cover the plaintiff's attorney fees. If they didn't pay, they would be given a two-day jail sentence; for each

additional hearing that they missed, they would be charged a higher attorney fee and get a longer sentence.

Most states don't allow contempt charges to be used for nonpayment, and some, like Indiana and Florida, have concluded that it is unconstitutional. Michael Crowell, a retired law professor at the University of North Carolina and an expert in judicial authority, reviewed Casement's policy. "You can't lock people up for contempt for failing to pay unless you have gone to the trouble to determine that they really have the ability to pay," he said. Casement told me he hadn't made findings on ability to pay before ordering defendants to foot attorney's fees, "but I know that's something the court should consider," he said. He also made plain why he wrote the policy: "Mr. Hassenplug and Brehm's outfit have asked me to." (Brehm denied she requested this.)



Judge David Casement in the courtroom. Casement, a cattle rancher, was appointed magistrate judge, though he'd never taken a course in law.

Casement has not done everything the debt collection lawyers have suggested. At first, he agreed to their requests to set bail at the amount of the debt, but he eventually settled on \$500. "Most people can come up with \$500," he said. "It may not be their money, but they know someone who will pay." He made sure no one was arrested unless they'd been reached by personal service or certified mail.

Kansas law allows courts to order debtors in "from time to time," leaving discretion to judges. Casement limited the frequency of Hassenplug's debtor's exams to once every three months. He came to the decision by his own logic around what seemed like a reasonable burden for defendants, and it remains his personal policy today. The law also states that anyone found to be disabled and unable to pay can only be ordered to appear once a year. Without an attorney, debtors like Kenneth Maggard don't know to assert this right.

Allowing bail money to count toward collections raises some of the most critical legal questions. Hassenplug told me that he thinks it's great that cash bail is applied to the debt. "A lot of times, that's the only time we get paid, is if they go to jail," he said. Peter Holland, the former director of the Consumer Protection Clinic at the University of Maryland Law School, explained that this practice reveals that the jailing is not about contempt, but about collection. "Most judges will tell you, 'I'm working for the rule of law, and if you don't show up and you were summoned, there have to be consequences,'" he explained. "But the proof is in the pudding: If the judge is upholding the rule of law, he would give the bail money back to you when you appear in court. Instead, he is using his power to take money from you and hand it to the debt collector. It raises constitutional questions."

Congress has not acted on advocates' calls to amend the Fair Debt Collection Practices Act to prohibit collectors from requesting warrants. There are also no current efforts to bar nonprofit hospitals or medical providers that receive funds through Medicare or Medicaid from seeking warrants. Some states have reformed their laws, to make sure defendants are properly served or to prohibit wage garnishments for debt. But legal experts on collections say that more remains to be done, like taking jail out of the equation and instead requiring debtors to sign a financial affidavit or a promise to appear.



Hassenplug's office in Coffeyville.

Shea, from ARSI, said that using the legal process is time-consuming and costly — a last resort; arrests are “the least desirable stage for any case to reach for all involved.” Even after lawsuits are filed, they try to connect eligible debtors with the Coffeyville hospital to apply for financial assistance, he said. Last year, the hospital wrote off \$1.7 million in charity care, said Bell, the hospital lawyer. “That is evidence of a hospital that cares.”

Casement said he did not consider the legality of his policies a problem. He placed some blame on the health care system. “What we have isn’t working,” he said. “As a lifelong Republican, I would probably be hung, but I think we need health care for everybody with some limits on what it’s going to cost us.”

The way he saw it, he had wide latitude to enforce compliance with a court order, though he acknowledged that creditors used bail money to their advantage. “I don’t know whether the Legislature intended it to be used that way or not,” he told me. “I have not had enough pushback from the defendants’ side to give me the impression that I’m really abusing this badly.”



Car lights streak by on a quiet Coffeyville street.

BEFORE I LEFT Coffeyville, I sat down with Hassenplug in the low-ceilinged courtroom. I asked him whether he thought that the system in Coffeyville was effectively imprisonment for debt, in a country that has outlawed debtors' prisons. "The only thing they're in jail for is not appearing," he replied. "I do my job, I follow the law. You just have to show up in court." Debt collection is an \$11 billion industry, involving nearly 8,000 firms across the country. Medical debt makes up almost half of what's collected each year. Today, millions of debt collection suits are overwhelming state courts. The practice is considered a "race of the diligent," where every creditor is rushing to the courthouse, hustling to get the first judgment, in order to be the first to collect on a debtor's assets. In Hassenplug's view, though, this work is not the rich taking from the poor. He laughed at how locals spread rumors, saying that he seized wheelchairs or Christmas trees. Once, he confessed, he took a man's Rolex, only to find out it was a fake. Some months, he said, even his law office could not make ends meet.

After a couple of hours, a clerk poked her head into the courtroom and told us it was time to leave. Hassenplug and I began to walk out, and on the terrazzo steps, he asked if I wanted to see his buildings. He owned five of them on a shuttered stretch of town. He wondered out loud if he was making a mistake by inviting me, but he was pleased when I accepted. "There ain't any place on earth quieter than downtown Coffeyville," he said, leading me into the silent streets. He walked me through the alleys under a cloudless sky, and when he arrived at one of his buildings, he tapped a code to his garage. The door lifted, and inside, five perfectly maintained motorcycles, Yamahas and Suzukis, were propped in a line. To their left, nine pristine, candy-colored cars were arranged – a Camaro SS with orange stripes, a Pontiac Trans Am, a vintage Silverado pickup with velvet seats. He toured me around the show cars, peering into their windows, and mused about what his hard work had gotten him.

Correction, Oct. 16, 2019: This story originally misstated the type of cancer Tres Biggs' son, Lane, had. It was leukemia, not lymphoma.

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The Columbus Dispatch

Opinion

Column: Tools for deciding bail should be chosen by lawmakers, executive



Jeffrey Clayton

Posted Nov 4, 2019 at 5:15 AM

In late September, the Ohio Supreme Court made the wise decision to remove all references to pretrial risk assessment in its proposed rule changes regarding bail and pretrial release in criminal cases. The decision signals a significant change in attitude of stakeholders in the continuing saga of bail reform, not only in the state, but on a national level, as well.

How did we get here and what does it mean? Last year, the state Supreme Court formed the ominous-sounding Task Force to Examine the Ohio Bail System. Among its missions was to examine the use of pretrial risk assessment algorithms. It focused on a suggested change in criminal procedure, which would delegate power to select such algorithms to a panel created by the court.

Unfortunately, this proposed change was contrary to what had already been established by the other two branches of state government. The Ohio Risk Assessment System has long been established through legislative enactment and executive action. And it is currently the only suite of risk assessment tools allowed by law.

By July, the task force finished its work and issued a report, which recommended changes to Ohio's bail system. Among its suggestions was a requirement to make pretrial risk assessments available to all judges. It also called for the Supreme Court, via a committee, to become directly involved in approving and assessing the validity of such tools. Moreover, it would have demanded that the legislature fund training and implementation of these instruments.

By mid-September, Chief Justice Maureen O'Connor declared that the key to bail reform depended on the use of a risk assessment tool created by judges in their counties or one provided by the Supreme Court task force to guide bail levels.

Part of the task force's recommendations was for a risk assessment to determine the likelihood of a defendant to appear and their risk to public safety. It would have been applied to anyone not yet released on bail, either before or after their initial appearance. Significantly, it would have created an exception to the tool already adopted by the legislature and approved by the Ohio Department of Rehabilitation and Corrections — circumventing legally established procedures.

While this was going on, 27 university researchers issued a strongly worded public declaration denouncing the use of risk assessment. Academics from Harvard, MIT, Princeton, UC Berkeley and Columbia joined to discredit the algorithms, stating they are racially biased and do not accurately predict the risks of failures to appear or the commission of new crimes. In addition, the ORAS tool continued to be the target of heavy criticism concerning validation of the algorithm. A simple unanswered question emerged: In the 10 years since it was implemented, does it work? The growing evidence had been damning.

Finally, and fortunately, when the Ohio Supreme Court on Sept. 23 released for public comment the proposed rule changes regarding bail, all references to

pretrial risk assessments were removed. The court recognized that it is not in its province to get involved in prejudging whether these tools meet the test of scientific evidence or should be considered reliable.

The court also has sent a clear message to those attempting to manipulate the judiciary to suit their own agendas: Regulation of risk assessment tools belongs in the domain of the legislative and executive branches of government. It is their responsibility and duty to regulate use of such tools and to properly respond to widespread and growing criticism that they make the pretrial release system worse, not better.

We can heave a collective sigh of relief that the Supreme Court recognized the deep flaws in the task force's recommendations. Many Ohioans may never realize the bullet their state just dodged. But such reasonable and well-thought-out outcomes are hardly a given in the realm of government. There is a cautionary tale to be learned here and one that jurisdictions across our nation should well heed.

Jeffrey Clayton of New Jersey is executive director of the American Bail Coalition.



WHY YOU SHOULD CARE

Because no one should die in jail waiting for their court date.



Fair and Equal: An OZY series on fixing the skewed scales of American justice.

It was after the fifth [inmate died](#) at the Cuyahoga County Corrections Center when Judge Michael Nelson finally decided to break his silence.

In four months, they'd died for various reasons: some for being refused necessary medication, others by hanging when guards were asleep. Nelson was shy of two years on his municipal court seat when Allen Gomez, a 44-year-old on a \$1,500 bond for five grams of cocaine possession, died of causes not yet known.

“And people still acted like this was new!” Nelson says. “But it wasn’t *new*. This had been going on for years. Because that’s the mentality at the jail, this institutional approach to inmate management. Who knows what else has gone *unreported*?”

IT’S ONLY THE BEGINNING OF WHAT NELSON SEES AS A WIDER SWEEP OF CLEVELAND’S SYSTEM.

Nelson already knew the jail’s 2,240 population was over capacity by about 500. Then, U.S. marshals would go on to release a report depicting the jail as a horror show: Inmates were routinely denied access to showers, toothbrushes and toilet paper when in “Red Zone” lockdown. Unused cafeteria food was stored in office areas that “reeked of dead vermin.” Pregnant women were sleeping on floor mattresses. Juveniles were thrown in with 11 others in cells made for two.

So Nelson, 70, became the first judge in the Cleveland area to simply [stop setting high bonds](#) for nonviolent arraignees who, unable to pay the \$500 or so, would otherwise spend days, weeks or months sitting among convicted inmates.

Other judges in Texas and North Carolina have pushed bail reform — reducing or eliminating the cash bail bond process in the courts — as a way to curb mass incarceration, and anti-bail prosecutors from Philadelphia [to Jackson, Mississippi](#), are proliferating. But Nelson was different in taking action into his own hands to deal with a jail crisis. If he *himself* simply stopped sending so many people to the county jail, conditions would improve. He’d be saving inmates from dying before they were even proven guilty.

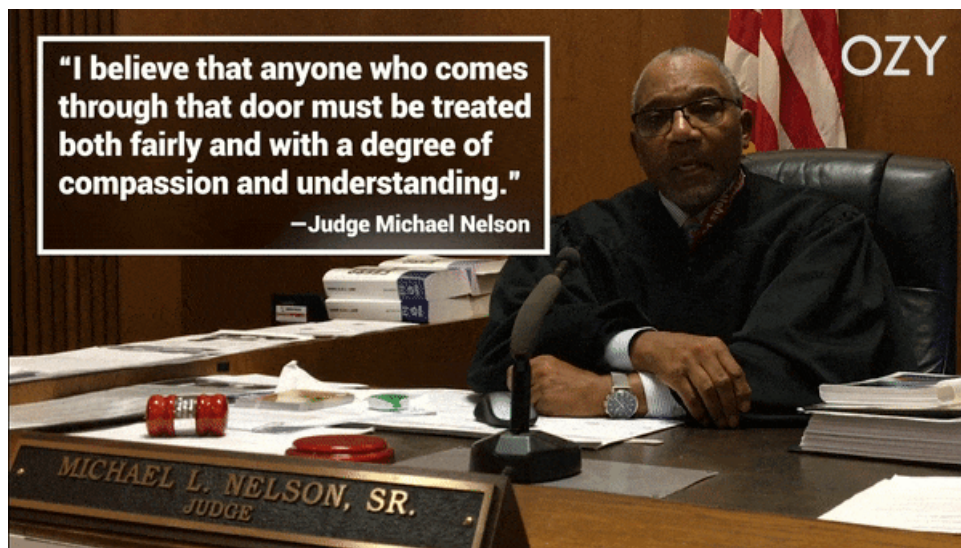
“They’re mostly misdemeanors, not murders,” Nelson says while eating lunch at Karl’s Inn of the Barristers, a diner in the shadow of the beige, 13-floor jail on East Third Street. “People being picked up for open containers who sit around until their court date. I mean, instead of just giving these people a citation that says, ‘Come to court,’ we’re going to *arrest* them and take them to jail? You’ve got to be kidding me.”



Nelson with his parents and siblings.

SOURCE [NATHAN C. WARD FOR OZY](#)

Nelson confronted the law at an early age. When Nelson was 2, his father was killed while attempting to rob a Cleveland bus driver. As a teenager, his family moved in and out of east side Cleveland housing projects. Nelson's mother set the shy but rambunctious student away to Kingsway College in Oshawa, Canada, where he met many draft dodgers and civil rights advocates "burnt out on the movement." Instead, he returned to Ohio energized for revolution in Black American politics. In 1968, Nelson attended the historically Black Central State University and weighed signing up for Vietnam until he had a scrap with a ROTC drill commander. Instead, Nelson took a job working for the mayoral campaign of a childhood friend, helping the 40-year-old Carl Stokes get elected as the first-ever Black mayor of a major U.S. city.



Politics remained a constant, including a stint on Jesse Jackson's 1984 presidential campaign, even as Nelson ended up working as a schoolteacher, forming his own Alliance for Concerned Teachers to back up Black educators facing budget shortfalls. In his 30s, he followed a lifelong dream to attend law school and became a defense attorney, taking up cases from homicide to "neighbors getting into a scrape after one threw paint on the other's car." In the midst of that, Nelson married his high school girlfriend, Donna Kelso (who would act as his campaign manager), and the two would have four children and five grandchildren. He spends his free time out of the legal world catching plays or playing golf, frequently with police officers. "You don't always have to agree with people," Nelson explains, "but sometimes you can set aside your differences on the course."

Brenda Bickerstaff, who worked for Nelson during his defense attorney days, says Nelson's penchant for details — especially scrutinizing police reports during trial — would carry into his eventual bid for municipal judge. "Murder cases, robbery cases, trial cases — he never backed down," Bickerstaff says. "He's not scared of anyone!"



Nelson says he's saved hundreds of nonviolent alleged criminals from unjust pretrial jail time.

Since Nelson first spoke out a year ago, county officials have admitted to the jail's vast overcrowding problem. Judges are discussing a special court docket to reset the bonds of 500 inmates, and 50 more have been transferred to other counties. It's only the beginning of what Nelson sees as a wider sweep of Cleveland's system. Fellow judges have lent him support, he says, but not yet publicly.

Though Nelson doesn't have any immediate plans to run for a higher office — "I'll be aged out," he laughs — he's certain that his legacy will carry on. "That's why we're elected to these positions," he adds. "To improve the quality of life, not for self-aggrandizement. So that when we leave, we can say, 'Things are better now than they were when we got here.'"

[Mark Oprea](#), OZY Author [Contact Mark Oprea](#)

TOP STORY

More defendants may be out on bond with new court rules

By Matt Hoffmann News-Press NOW

Jun 12, 2019



An ATM-like device used to post bond is shown at the Law Enforcement Center in St. Joseph. Under soon-to-be law, other types of pretrial release will be considered first.

Matt Hoffman | News-Press NOW

A Missouri State Supreme Court ruling is set to take effect July 1 that likely will lead to more defendants out on bail.

The court ordered local judges to consider non-monetary means of assuring a defendant would appear in court before financial ones.

“We all share a responsibility to protect the public — but we also have a responsibility to ensure those accused of crime are fairly treated according to the law, and not their pocketbooks,” Chief Justice Zel Fischer said in an address to the Missouri General Assembly in January.

According to Fischer, if a judge does set a monetary bond, it must be the minimal amount to ensure the defendant’s return and the public’s safety.

The new order states that those arrested will be eligible for bail, “unless the court determines such release will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings.”

Another component of the new regulations involves the costs of any conditions of release that a judge may order. According to Bail Agent Norman Clark, defendants often have to pay for the cost of any monitoring devices they’re ordered to wear.

Under the latest ruling, judges must consider reducing or eliminating those costs.

“The court may not order a defendant to pay any portion of the costs of any conditions of release without first considering how to minimize or whether to waive those costs,” Fischer said.

Some state legislatures, like California, have moved to end cash bail. Clark said some states, like Nebraska and Illinois, don’t allow bounty hunters to retrieve those who’ve failed to appear after being bonded out by bail agents.

He added that one of the main advantages for the bail industry is that agents have an incentive to retrieve defendants. If a defendant doesn’t appear in court, Clark said the bail bond company will forfeit the amount it paid to the court promising the return of the defendant. Because of this, defendants who use a bond company often waive many constitutional rights, giving the bail bonds company increased authority.

“If the police come to your door they need a warrant to enter,” Clark said. “If we come to your door, and you don’t let us in, we’ll get in.”

He said defendants typically pay a premium, about 10 or 20 percent of the total bond, to a bail bondsman.

The bail company then posts the rest of the bond, and the defendant is free on any conditions a judge imposes. Clark said defendants don't get the premium back, even if they're ultimately found innocent.

The new ruling also sets a clear precedent for cases where someone is held without any sort of pretrial release. According to Fischer, judges must find "clear and convincing evidence" that no conditions would assure the defendants' return.

"The court shall set and impose the least restrictive condition or combination of conditions of release," part of the new ruling states.

TOP STORY

Expert: Missouri middle of the pack in bail enforcement regulation

By Matt Hoffmann News-Press NOW

Nov 20, 2019



An ATM-like device used to post bond is shown at the Law Enforcement Center in St. Joseph.
Matt Hoffman | News-Press NOW

Even though Missouri recently reformed rules for pretrial release, a bail enforcement expert said the regulations for those who track down defendants who miss court could be tightened.

Jeff Clayton, the executive director for the American Bail Coalition, said Missouri's current regulations for bail recovery agents, colloquially known as bounty hunters, are pretty average in relation to other states.

“The continuing education side is really where it’s at,” Clayton said. “Once you get your license you forget everything. So we need to constantly refresh as laws change.”

Currently, Missouri requires bail recovery agents to take 24 hours of an approved training course, pass a written test and work under a licensed bail agent. They also must complete a background check. To renew a license, agents must take an eight-hour course each year.

Clayton said bail agents, who actually write bail bonds, also could use more continuing education.

“I think (agents could use) a better understanding of the insurance regulations, what you can and can’t do, when you can take collateral versus when you have to give it back,” Clayton said. “And I think the biggest issue going on right now is when you can kick in a door or not and that’s unknown, depending on the state.”

Clayton said some states, like Idaho, have essentially zero regulation in who can track down those who skip bail.

Other states, like California, have banned “bounty hunting” altogether, though that law is currently on hold in lieu of a public referendum in 2020.

“All states that have bail agents who are allowed to write bail have regulated the agents,” Clayton said.

However, he said some states require the bail agent, and not a separate recovery agent, to collect the defendant.

“We’d like to see expanded training in Missouri, that’s for sure,” Clayton said.



Colorado lawmakers want fewer people awaiting trial in jail

Despite last year's bail reforms, advocates say pretrial incarceration still disproportionately affects low-income people and people of color.

By John Herrick -November 26, 2019



Colorado Capitol early on May 10, 2018 after adjournment. Lawmakers in 2020 will debate bail reforms. (Photo by John Herrick)

Lawmakers this legislative session will debate bail reforms to ensure fewer people accused of committing a crime don't have to wait in jail before they get their day in court.

Pretrial incarceration is used when a judge determines a person charged with a crime is at risk of missing their court date or committing another crime. Other times, people can't afford the cash bond necessary for their release.

Criminal justice reformers argue that the process for holding people in a cell until they can prove their innocence results in the disproportionate incarceration of low-income people and people of color.

This legislative session, which begins Jan. 8, lawmakers will build on past reforms, seeking to find more ways to keep people out of jail before their trials.

"It's really about access to justice," said Rep. Leslie Herod, a Democrat from Denver who serves as vice chair on the House Judiciary Committee. Herod said her goal is to "dismantle the racism and the classism" that exists within Colorado's criminal justice system.

Last session, lawmakers banned cash bail for petty and municipal offenses, such as violating an open-container law, and set up new rules to require more timely bond hearings.

They want to take those reforms further. One idea would grant more leniency to people who fail to show up for their first court date, which can result in an arrest warrant and jail time. People would instead have three days after their initial court date to schedule a new hearing. Reformers say the harsh penalties for failure to appear disproportionately affect low-income people who rely on public transportation and those who don't own a phone. They also affect people struggling with mental health issues or substance use disorder.

Another reform would require that a hearing be scheduled within 48 hours of a person's arrests. Reformers say it's common for people to wait in jail weeks before they have a chance to prove their innocence. Michael Bailey spent 52 days in jail before he first saw a judge, [according to a lawsuit filed on his behalf by the ACLU against the Teller and Pueblo county sheriff's offices](#). Bailey said he lost his house and job during the ordeal. The charges against him were dismissed when he appeared in court.

Tom Raynes, executive director of the Colorado District Attorneys Council, [spoke in opposition to a bill last session](#) that would have required a hearing within 48 hours. He said it was an issue specifically for rural district attorneys who were concerned about the need for additional “infrastructure, mechanisms, alternatives.”

Another reform would expand the use of so-called risk assessment tools and study them for bias and effectiveness at predicting crime. About a [dozen](#) of Colorado’s 64 counties use the algorithms to help judges determine whether someone who was arrested is at risk of committing another crime or failing to show up to their court date.

Supporters of the algorithms, including Colorado’s public defender’s office, say they generally usher people out of jail ahead of their court date and are a fairer alternative to cash bail, which favors those who have — or can get — the money to buy their freedom.

But civil rights advocates have concerns. They argue that questions used to screen defendants [reinforce racial bias in the criminal justice system](#), and are more likely to keep people of color behind bars.

A common risk assessment tool, known as the Colorado Pretrial Assessment Tool, or CPAT, was created in 2013 by the Pretrial Justice Institute. The assessment asks defendants 12 questions. One question asks for the age at first arrest. Critics say this question affects people of color who grow up in heavily policed areas, and does not account for racially biased policing and profiling. This question also has the greatest weight in the overall score that determines if someone is kept in jail before their trial. Other questions asking about “past or current problems with alcohol” and “past or current mental health treatment” can disadvantage people with a substance use disorder or mental health issues, critics say.

In March, Jeffrey Clayton, executive director of the American Bail Coalition, [sent a cease and desist letter](#) to a Weld County attorney saying the county’s risk assessment tool may violate the Americans with Disabilities Act and the U.S. Constitution’s equal protection and due process clauses under the 14th Amendment. Clayton wants to see these tools done away with. He said the state should instead invest in bond hearings.

"We need more due process. Not less," Clayton said.

John Herrick

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[News](#)

For bail industry, reforms are potential deathblow

Robert Gavin

Jan. 15, 2020Updated: Jan. 20, 2020 10:58 a.m.



The Bernardo, Goldstein & Quinn bail bondsman agency is branching out into the clothing business to help offset losses in the wake of New York's bail reform law on Friday, Jan. 17, 2020, in Colonie, N.Y. (Will Waldron/Times Union)

ALBANY – Last January, Jay Bernardo lost his father Bill, the man who started the family's bail bondsman business and for nearly 60 years was known in courtrooms from Albany to Plattsburgh.

A year later, he could lose their profession.

Bernardo, president of the Bernardo, Goldstein & Quinn bail bondsman agency that Bill Bernardo founded in 1962, estimated that business dropped 80 to 90 percent since New York's bail reform went into effect on Jan. 1.

The changes enacted in last year's state budget leave defendants accused of most non-violent felonies and most misdemeanors ineligible for bail or to be held in jail as they await trial. The changes were championed by Gov. Andrew Cuomo and legislative leaders as a way to spare poor people from remaining in custody because they cannot afford bail. But for the bail industry, the changes are a potentially lethal blow.

Bail bondsmen, also known as bail agents, depends on bail to exist. They pay for a defendant's bail and, in return, receive a fee set by law.

Bernardo, who doubles as president of the New York State Bail Bondsman Association, met with lawmakers at the state Capitol last week to try to impress on them the need to change the law or temporarily put a moratorium on it. He said he would be willing to join a task force to address the issue.

Bail agents, he noted, simply execute decisions set by judges.

"Everyone in the bail industry has got to look for alternative sources of income right now," Bernardo told the Times Union on Wednesday. "You have got to pay your medical and your rents and whatever employees you have left. Most of the agencies in New York state have whittled down to bare minimums. People have had to be let go. People that saw, in a lot of cases the writing on the wall, left. One of my best agents, he saw the writing on the wall and he left."

New York is home to some 212 bail agents who have more than 2,000 employees, Bernardo said.

"This is happening throughout the state to make allowances for the drop in revenues," he said. "I don't know if anybody feels bad for the bail bond industry but there are people that we employ that had a tough Christmastime."

"A lot of people hurting now."

The bail bond business in the U.S began more than century ago and remains the primary way prisoners pay bail set by a judge after an arrest. It can be a lucrative business. Bail bondsmen generally charge a percentage of the bail they put up. Often, defendants or their families put up collateral including homes or other assets that can be lost if the suspect runs.

New Jersey passed bail reform in 2017 but unlike New York's version, judges in the Garden State have discretion to hold defendants they deem a danger to the community. Even there, Bernardo noted, reform has hurt businesses.

Referring to a conversation with a colleague, "I asked one day, 'What happened with a certain agency that was a large New Jersey agency and they say said, 'They own a couple of restaurants now. '"

Bernardo's company, which operates in the Hudson Valley, Capital Region and Adirondacks, is also involved in the insurance business.

Jeff Clayton, executive director of the American Bail Coalition, a trade association that includes bail insurance companies that underwrite criminal bail bonds, called New York's bail reform law fundamentally flawed.

"What's happening in New York is probably going to help us everywhere else in terms of, people aren't going to want to go down this bail reform road," Clayton said.

Clayton, a Colorado attorney, said in most states that have enacted bail reforms -- he mentioned New Jersey and New Mexico as examples -- cash bail was eliminated but prosecutors could request preventative detention of potentially dangerous defendants. He said such states have replaced bail agents with government employees supervising defendants on release which, according to Clayton, has been extremely costly.

Asked if he has seen bail reform such as New York's version elsewhere in the country, Clayton said, "Not like this ... nobody has gone to this point where we just, for a handful of offenses we're going to allow bail. Nobody has done that. This is the most liberal reform I've ever seen."

He said New York's bail reform "won't be a complete death sentence, but yes., you're looking at 75-80, 90 percent reductions in certain counties."

He estimated New Jersey's bail industry is down 95 percent.

"In New Jersey, the business was lost to detention and release," he said. "In New York, it's just being lost to release."

Advocates for bail reform have argued that the old system penalized low-income defendants who languished in jail pending trials while charged with non-violent crimes. Wealthier defendants facing the same charges, they noted, remained free because they or their family had the financial means to pay the bail figure.

"This created a situation in which innocent people were incarcerated simply because they were poor," said Albany Law School Emerita Professor of Law Laurie Shanks, a longtime defense attorney. "The people who were most severely impacted are those in the minority community. Incarceration harms not only these individuals and their families but society as a whole. People lose their jobs, lose their home and risk the loss of their children."

Shanks added: "While I am sympathetic to those in the bail bond industry for the loss of their income, this is similar to the changes in the regulation of payday lending, pawnshops, and other industries that have a disparate impact on individuals based on income."

Clayton said the advocates miss the fact that judges can access defendants. He did not entirely dismiss their arguments. He said the case of Kalief Browder, who starting at 16 spent three years in jail on New York City's Rikers Island accused of stealing a backpack -- a case that was later dismissed -- was "bad." Browder committed suicide at 22. Browder's case was a focal point for advocate who pushed for the elimination of cash bail, noting Browder languished in jail because he could not pay the \$3,000 bail.

"There are a lot of reforms in New York that should have been done," Clayton said.

Defendants who are eligible for bail have the possibility of low cash bail, secured bonds and unsecured bonds. With an unsecured bond, the defendant merely needs to sign a document promising to pay the money in the event the person does not show up. No money is required.

Such agreements are "as worthless as the piece of paper they're written on," Bernardo suggested.

"If you're talking to somebody who doesn't have a job, who has been in jail, is indigent possibly, even if they do have a little job, what are you going after if the guy doesn't show up?" he said.

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Robert Gavin covers state and federal courts, criminal justice issues and legal affairs for the Times Union. Contact him at **(518) 434-2403**

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Attorney General asks California Supreme Court to restore Humphrey bail-reform ruling

Xavier Becerra cites COVID-19 pandemic as new need for bail relief while high court reviews landmark appellate case



FILE – In this March 5, 2019, file photo, California Attorney General Xavier Becerra speaks during a news conference in Sacramento, Calif. (AP Photo/Rich Pedroncelli, File)

By **ROBERT SALONGA** | rsalonga@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: August 19, 2020 at 11:31 a.m. | UPDATED: August 19, 2020 at 7:27 p.m

California's attorney general is citing the COVID-19 pandemic in asking the state Supreme Court to reinstate the thrust of a landmark 2018 appellate ruling ordering state judges to spurn traditional cash bail schedules, to reduce the number of people jailed primarily because they can't afford bail.

In a letter to the high court Wednesday, Attorney General Xavier Becerra urged justices to make the central tenet of the Humphrey decision binding throughout the state while they review the case. In the January 2018 decision, the First District Court of Appeal rejected the convention of relying on high fixed bail amounts in cases where a defendant does not pose a substantial safety risk, and mandated that state trial judges more heavily consider alternatives like electronic monitoring.

But the ruling's legal impact was halted in May 2018 when the Supreme Court granted a review of the case. In the meantime, the state Legislature got involved, passing Senate Bill 10, which then-Gov. Jerry Brown signed that fall to officially eliminate the use of cash bail in California.

It would have taken effect this year, but a coalition of bail-bonds agencies swiftly moved to gather signatures and put the issue before voters on this November's ballot. Even then, the bill's support was fractured by late changes that left civil-rights groups withdrawing their backing, on the contention that the final version gave judges too much latitude and biased assessment tools in deciding a defendant's risk, and gave prosecutors access to a vaguely defined exemption path.

Which brings the issue to the current moment, when county jails across the state have been working to decrease their populations to stem COVID-19 risks in custody facilities.

"The unexpected change in circumstances caused by the unprecedented coronavirus pandemic warrant reconsideration of the matter," Becerra's office wrote in a Wednesday news release.

A spokesperson for the state Supreme Court declined to comment on the AG letter, on account of it involving a pending case. Chief Justice Tani Cantil-Sakauye has supported eliminating cash bail, saying in past remarks that it "unnecessarily compromises victim and public safety," and endorsing arguments that cash bail exacerbates socioeconomic and racial bias.

Opponents of the transformative policy change, particularly those in the bail bonds industry, say removing the current system takes away accountability for victims, and unfairly consolidates power among judges and prosecutors.

After the industry-backed repeal measure qualified for the ballot, Jeff Clayton, executive director of the American Bail Coalition, told this news organization, "The only debate we're having right now is: Is the current system worse than the alternative? And the answer is, no, it's not."

Kenneth Humphrey was charged with stealing a bottle of cologne and \$5 from an elderly neighbor at a San Francisco residential hotel in May 2017. Humphrey's bail was initially set at \$600,000, and later reduced to \$350,000, but still well beyond his ability to pay or post bond.

On appeal, the First District court sided with Humphrey's counsel — the San Francisco Public Defender's Office and nonprofit Civil Rights Corps — and in its 2018 decision wrote that Humphrey was "entitled to a new bail hearing at which the court inquires into and determines his ability to pay, considers nonmonetary alternatives to money bail, and, if it determines petitioner is unable to afford the amount of bail the court finds necessary, follows the procedures and makes the findings necessary for a valid order of detention."

San Francisco Public Defender Mano Raju said in a statement Wednesday that implementing the Humphrey decision is an "an essential safeguard."

"Without this protection, poor people — many of whom are Black and Brown — will languish in custody instead of having the opportunity to live free, fight their case and participate in effective programming, if necessary, while awaiting their day in court," Raju said. "Making this decision binding on all California courts is essential to ensuring fairness in the criminal justice system."

Also Wednesday, Deputy Solicitor General Joshua A. Klein made a point in the AG letter to write that Becerra's office was not looking to affect the court's review, particularly on the question of when bail can be denied in a non-capital case.

But he argued that the Humphrey ruling's driving premise — that unaffordable bail cannot be the sole reason someone is in jail — can and should be enforced now.

“We view that core constitutional principle to be clear and unassailable — pretrial detention should depend on an individualized assessment of the need for the person to be detained, rather than on the defendant’s financial resources,” Klein wrote.



Robert Salonga

Robert Salonga is a Pulitzer Prize-winning reporter covering criminal justice and public safety for The Mercury News. A San Jose native, he attended UCLA and has a Master's degree in journalism from the University of Maryland. He previously reported in Washington, D.C., Salinas and the East Bay, and is a middling triathlete. Reach him the low-tech way at 408-920-5002.

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THE WALL STREET JOURNAL.

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Bail-Bond Companies Retrench Under Criminal-Justice Changes

New York law eliminating cash bail for most crimes could put most of the state's bail-bond companies out of business, industry says



The Brooklyn House of Detention is reflected in the window of a bail-bond business on Atlantic Avenue. PHOTO: SARAH BLESENER FOR THE WALL STREET JOURNAL

By *Ben Chapman*

Jan. 26, 2020 10:00 am ET

A new law eliminating cash bail for most crimes in New York could put more than half of the state's bail-bond companies out of business, industry leaders said.

New York judges are prohibited from requiring bail of pretrial defendants for misdemeanors and nonviolent felony charges under [new criminal-court regulations that took effect Jan. 1](#).

Backers of the bail changes have said they prevent people who are accused of minor crimes from languishing in jails simply because they can't afford bail. Instead, defendants are released and instructed to return to court for their trials.

Critics have said the changes free repeat offenders to commit more crimes while they await hearings on current charges. Leaders in New York's bail-bond industry said the law has another consequence: It could put at least half of them out of operation.

"As far as it being a viable business, say goodbye," said Bernardo-Goldstein & Quinn Agency President Jay Bernardo, who has worked at the Albany bail bond company for 20 years. In an interview, Mr. Bernardo said his family's 60-year-old company has already shed about half of the dozen employees it had in 2019, with further shrinkage to come as fewer accused criminals seek bail under the new law.



Jay Bernardo says the Bernardo-Goldstein & Quinn Agency in Albany has already shed some employees and expects to let more go. PHOTO: RICHARD BEAVEN FOR THE WALL STREET JOURNAL

Mr. Bernardo serves as president of the New York State Bail Bondsman Association, which spent more than \$100,000—along with national industry groups—on lobbying to fight the new bail law. He said there are currently 212 licensed bail-bonds agents in New York. Those agents generate revenue by charging fees in

exchange for guaranteeing bail payments for family members of accused criminals in the event that the accused don't return to court, he said.

People who are arrested and charged with crimes in criminal courts may be offered bail as a condition for their release as they await trial. Typically the family of the accused would provide a fraction of the required amount, and a bail-bond company would insure the remainder. The funds act as collateral to help ensure defendants return for their hearings.

New York State bail-bond companies employed around 2,000 people in 2019, according to Mr. Bernardo, but that number may soon shrink drastically.

American Bail Coalition Executive Director Jeff Clayton, whose group represents the national bail-bonds industry, said in an interview that New York State bail-bond companies, which insured about \$500 million in total bail liabilities in 2019, will likely see their revenues fall by half. "A lot of these people who were able to offer folks the right to bail now will go out of business," he said. "That's unfortunate."

Mr. Clayton said that changes limiting the use of bail in New Jersey that took effect in 2017 reduced the use of bail there by more than 90%, prompting many bail-bond companies to eliminate jobs or go out of business. He said the outcome of the changes in New York may have an impact on other states currently considering bail changes, including California.

Bail-bond companies across New York are adjusting to the change. Mr. Bernardo said his company will survive by diversifying into retail-clothing sales and insurance.

Empire Bail Bonds, which operated seven storefront locations in New York City, Long Island and Westchester County, is cutting costs by closing most of its stores, President and CEO Michelle Esquenazi said in an interview. "We're not going to be a brick-and-mortar shop anymore," she said. "We're going to narrow it down to one or two locations."

New York State Senate Deputy Majority Leader Michael Gianaris, a backer of the new law, said the elimination of cash bail is justified even if it prompted job losses.

“We should prioritize fairness for human beings over an industry that profits off of the unfairness that existed for so long,” Mr. Gianaris, a Democrat from Queens, said in an interview. “I’m always concerned about the loss of jobs, but we can’t allow profits to be put before people who are being held in cages.”

But other lawmakers want changes to the law allowing judges to require bail when accused criminals represent a public-safety risk. “We’re going down the wrong path,” New York State Assemblyman Michael Reilly, a Republican from Staten Island, said in an interview. “Right now, we’re seeing that it’s not working.”

—Jimmy Vielkind contribute to this article.

Write to Ben Chapman at Ben.Chapman@wsj.com



NY Bail Firm Revenues to Shrink By Half Under New Law

By Crime and Justice News | 8 hours ago

A new law eliminating cash bail for most crimes in New York could put more than half of the state's bail-bond companies out of business, industry leaders [tell the Wall Street Journal](#).

Judges are prohibited from requiring bail of pretrial defendants for misdemeanors and nonviolent felony charges under new regulations that took effect Jan. 1. Backers of the changes say they prevent people who are accused of minor crimes from languishing in jails simply because they can't afford bail. Instead, defendants are released and told to return to court for their trials. Critics say the changes free repeat offenders to commit more crimes while they await hearings.

"As far as [the industry's] being a viable business, say goodbye," said Bernardo-Goldstein & Quinn Agency President Jay Bernardo, who has worked at the Albany bail bond company for 20 years. The family's 60-year-old company has shed half of its dozen employees, with further shrinkage to come as fewer accused criminals seek bail under the new law.

Bernardo heads the New York State Bail Bondsman Association, which spent more than \$100,000—along with national industry groups—to fight the new bail law. He said there are 212 licensed bail-bonds agents in New York. Those agents generate revenue by charging fees in exchange for guaranteeing bail payments for family members of accused criminals in the

event that the accused don't return to court. New York State bail-bond companies employed 2,000 people in 2019, but that number may soon shrink drastically.

American Bail Coalition Executive Director Jeff Clayton, whose group represents the national bail-bonds industry, said New York firms that insured \$500 million in bail liabilities in 2019 will likely see revenues fall by half. "A lot of these people who were able to offer folks the right to bail now will go out of business," he said. "That's unfortunate."



Lawmakers slam Missouri Supreme Court over bail rules

By SUMMER BALLENTINE January 24, 2020

COLUMBIA, Mo. — Dozens of Missouri lawmakers have asked the state Supreme Court to undo new rules limiting when judges can impose bail, a move that was aimed at reducing court costs that can derail the lives of low-income defendants.

More than 80 legislators signed on to a letter sent by Rep. Justin Hill to Supreme Court judges this week. In it, the Republican from Lake Saint Louis complained that a new rule requiring judges to first consider non-monetary conditions for pretrial release went too far.

“Now, individuals who are potentially dangerous or have a history of failing to appear for court are being released on recognizance — with no conditions at all — because the rules that went into effect in July make it too difficult for judges to impose bail,” wrote Hill, a former O’Fallon, Missouri, police officer.

He cited one of the two convicted felons facing criminal charges over a Kansas bar shooting that killed four people. Both men allegedly involved had previous brushes with the law that could have kept them behind bars had judges and other officials made different decisions, although only 23-year-old Javier Alatorre’s case dealt with Missouri judges.

Alatorre was released from jail in September in Jackson County, Missouri, where he still faces charges of fleeing from police in a stolen vehicle. A judge released him on his own recognizance after his attorney sought to have his bail lowered.



Missouri judges are still able to set bail under the new rules if needed, but only at an amount necessary to ensure either public safety or that the defendant will appear in court. Courts may not order a defendant to pay costs associated with conditions of their release, such as the costs of an ankle monitoring bracelet, without first considering reducing or waiving those costs.

Prior court rules directed judges to impose bail only to ensure that defendants returned to court, although the Missouri Constitution gave judges leeway to deny bail or set limits on release as a way to protect victims or public safety.

During a speech before the Legislature last year, Missouri Supreme Court Judge Zel Fischer praised the changes as a way to ensure defendants are treated fairly in the justice system.

“Too many who are arrested cannot afford bail even for low-level sentences and remain in jail awaiting a hearing,” Fischer said. “Though presumed innocent, they lose their jobs, cannot support their families and are more likely to reoffend.”

Hill and other lawmakers want the new rules tossed. Hill instead proposed limiting bail for minor offenses, requiring judges to hear bail appeals quickly, and ensuring that defendants don’t stay in jail before trial for a longer period of time than the possible sentence for their alleged crime.

A spokeswoman for the Supreme Court didn’t immediately comment Friday.



MÁS DE 80 LEGISLADORES EXIGEN A LA CORTE SUPREMA DE MISSOURI ANULAR LAS NUEVAS REGLAS DE REFORMA DE FIANZA



Lakewood, CO (23 de enero de 2020) - Los legisladores de Missouri ofrecieron ayer una sorprendente reprimenda de la afirmación del presidente del Tribunal Supremo George Draper de que las nuevas leyes estatales de reforma de fianzas fueron un éxito.

Más de 80 legisladores firmaron y entregaron una carta a la Corte Suprema de Missouri, exigiendo que se revoquen las nuevas reglas, que entraron en vigencia el pasado julio. Además, pidió que el tribunal superior trabaje con la legislatura para adoptar un conjunto de cambios "responsables" y "adaptados" diseñados para mejorar el sistema. La acción se produjo el mismo día que el Presidente del Tribunal Supremo Draper presentó su Discurso sobre el estado del poder judicial en el que proclamó el triunfo de las nuevas leyes.

La medida de los legisladores se produjo después de meses de informes de incidentes de alto perfil en los que los acusados presuntamente cometieron numerosos actos atroces después de ser liberados por los tribunales penales sin tener que pagar la fianza.

Un gran porcentaje de los arrestados fueron considerados potencialmente peligrosos o tenían antecedentes de no comparecer ante el tribunal. Sin embargo, las nuevas reglas efectivamente ataron las manos de los jueces al hacerles casi imposible imponer la libertad bajo fianza. El resultado ha sido que los acusados reinciden mientras esperan el juicio.

Javier Alatorre, el presunto hombre armado en el alboroto mortal de octubre en el bar Tequila KC de Kansas City, tenía antecedentes penales, incluida la resistencia al arresto y la huida de la policía. Fue arrestado por varios cargos unas semanas antes de

la masacre, pero se le ordenó salir de la cárcel por su propio reconocimiento bajo las nuevas reglas.

"La legislatura de Missouri ha transmitido un mensaje claro de que está en total desacuerdo con las conclusiones incorrectas del presidente del Tribunal Supremo de que la reforma de la fianza es un éxito", dijo Jeff Clayton, director ejecutivo de la American Bail Coalition. "El abrumador número de legisladores que firmaron una carta exigiendo la derogación de las nuevas reglas de reforma de la fianza de la Corte Suprema del estado es un claro indicador de que en realidad son un fracaso total y abismal".

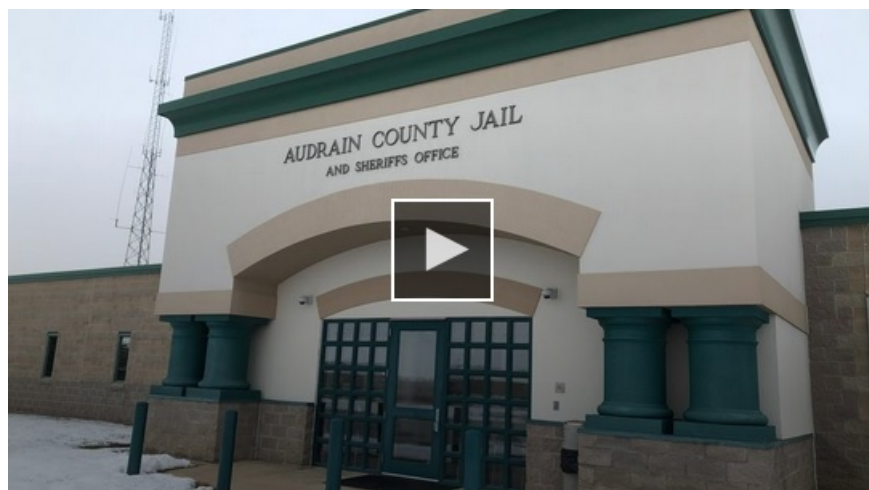
Si bien algunos partidarios de las nuevas leyes han afirmado que los problemas reportados son simplemente problemas menores en un nuevo sistema, el grupo de legisladores estatales que se unieron para firmar la carta a la Corte Suprema de Missouri dicen que las reglas simplemente no funcionan como se esperaba.
Sobre la American Bail Coalition

La American Bail Coalition se dedica a proteger el derecho constitucional a la fianza y la promoción, protección y promoción de la profesión de fianza en los Estados Unidos. Compuesto por las compañías de seguros de garantía más grandes del país, ABC trabaja con las comunidades locales, las fuerzas del orden, los legisladores y otras partes interesadas en la justicia penal para utilizar su experiencia y conocimiento de la industria de fianzas para desarrollar soluciones de justicia penal más eficaces y eficientes. www.ambailcoalition.org



More than 80 lawmakers demand MO Supreme Court change ruling on bail requirements

by Mark Slavitt | Monday, January 27th 2020



Audrain County Sheriff Matt Oller blames an 18% increase in crime reports in 2019 on a Missouri Supreme Court ruling that changed bail requirements. (Mark Slavitt/KRCG 13)

AUDRAIN COUNTY — Dozens of Missouri lawmakers were upset Monday with a Missouri Supreme Court ruling that [changed bail requirements](#). Supporters of the ruling said cash bonds did not respect someone's rights of a fair trial and equal protection. Opponents of the changes said the ruling put dangerous criminals back on the streets under no conditions.

More than 80 Missouri lawmakers signed and delivered a letter to the Missouri Supreme Court demanding the cancellation of the new rules which went into effect July 2019. They delivered their letter on the same day Chief Justice George Draper gave his State of the Judiciary Address in which he said the new laws were a triumph.

Legislators demanded the changes after months of reports of high-profile cases. The cases involved defendants that committed crimes after being released by criminal courts without posting bail. Audrain County Sheriff Matt Oller saw an 18 percent increase in crime reports in 2019. Oller said the numbers were up because of the high court's ruling.

"We've looked at those numbers," Oller said. "We can't come up with any community changes within the community that have led to the increase like that other than the Missouri bond reform rules."

Some supporters of the ruling claimed any problems were simply minor kinks in a new system. Some opponents said the rules were simply not working as intended. Oller said he was searching for a dangerous drug dealer because of the changes in Missouri's bail rules.

"He ran from one of my deputies during a car stop. He crashed a car," Oller said. "Because of Missouri bond reform, he was held overnight in the county jail and was released the next day without having to post any bond. He had to put no skin the game in order to ensure his appearance."

Members of the Missouri House Judiciary Committee wanted to work with Supreme Court Justices to create a new set of changes that encouraged defendants to show up for court while getting swift justice.

The Missouri Times

JEFFERSON CITY, Mo. — Dozens of state representatives have signed onto a letter asking [Missouri's highest court](#) to reverse course on pre-trial release standards it set last year.

The Missouri Supreme Court implemented [new bond rules](#), that went into effect in July 2019, which urged judges to consider non-monetary conditions of release first, unless deemed necessary for the public's safety or to ensure an alleged offender will show up to a scheduled court appearance.



State Rep. Justin Hill

These new rules were heavily [criticized by a bevy of Republican lawmakers](#) following an October shooting at a Kansas City, Kansas, bar that left four people dead. One of the suspects in the shooting had a history of run-ins with the law in Missouri and was granted a bond reduction and released just a month before the shooting.

In the letter to the Missouri Supreme Court — and provided to The Missouri Times — 82 state representatives said the new rules have “placed a significant burden on all our courts.” Rep. Justin Hill, who championed the letter, told The Missouri Times the court needs to repeal the rules and come to the table to work with the legislature.

“The Supreme Court should recognize that they went outside their authority” by implementing the rule changes, Hill said. “How more blatant can you get in violating the separation of powers?”

The letter is expected to be delivered to the Supreme Court Thursday, just one day after Missouri Supreme Court Chief Justice George W. Draper III called for a continued push for criminal justice reform in the legislature as part of his [State of the Judiciary address](#). Specifically, Draper praised the legislature for making certain crimes [eligible for expungement](#) and allowing defendants to pursue diversion programs last year.

“Many judges feel they no longer have the option to impose conditions like bail that encourage accused criminals to avoid re-offending while awaiting trial, and they are instead forced to engage in ‘catch-and-release,’ letting individuals go on recognizance with no conditions to hold them accountable,” Hill said.

A spokesperson for the Missouri Supreme Court did not immediately respond to a request for comment Wednesday afternoon.



Lawmakers Demand Change on New Bail Reform Rules

January 24, 2020 By [KRMS Newsroom](#) [Leave a Comment](#)

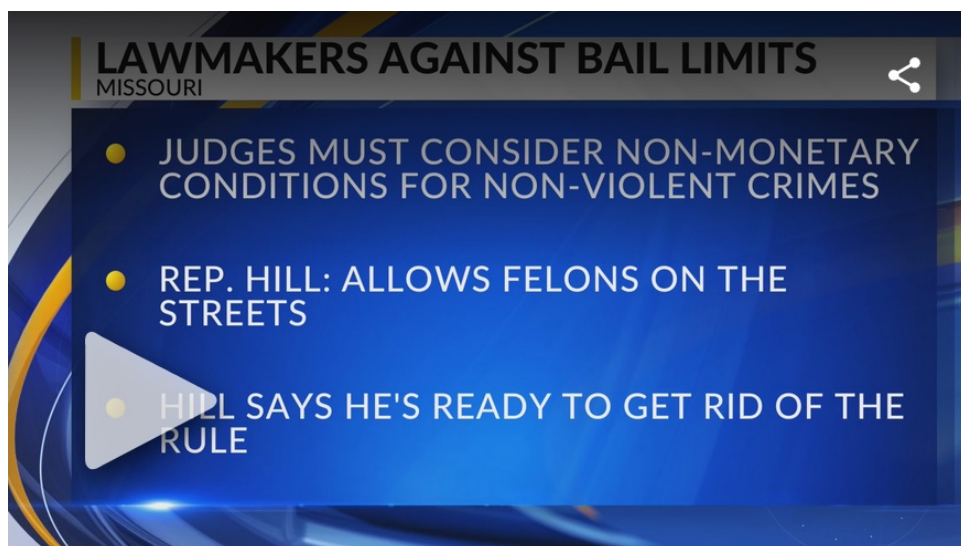


Missouri's new rules on bail for accused criminals are not working, and lawmakers are demanding a do-over. That's the sentiment of 80+ legislators in Jefferson City who signed on to a letter that was sent to the Missouri Supreme Court this week. They want the rules rescinded. They also are calling for a more streamlined approach to reform, involving input from the legislature to craft a responsible and narrowly-tailored set of changes. The new rules went into effect last July and have resulted in increases in failure-to-appear rates as well as a number of suspects re-offending, sometimes within just days of their release from jail.



REGIONAL NEWS

Missouri lawmakers attempt to put an end to a “disastrous” rule



Posted: Jan 27, 2020 / 05:35 PM CST / Updated: Jan 27, 2020 / 05:36 PM CST

Mo. — More than 80 Missouri lawmakers want to get rid of a “disastrous” rule that limits judges from requiring bail for non-violent offenders.

According to our news partners at Missouri Net, all of the lawmakers involved have signed a letter supporting the denouncement of the rule.

The State Supreme Court ruling went into effect this past summer.

The ruling says judges must consider nonmonetary conditions for pre-trial release.

Justin Hill, a Republican state representative from St. Louis, said the rules allow felons to be on the streets with no bail to encourage them to show up in court.

Hill says he’s ready to take extreme measures to get rid of the rule limiting bail.

Missourinet

Missouri lawmakers say Supreme Court got it wrong on ‘disastrous’ bail changes

JANUARY 27, 2020 BY [ALISA NELSON](#)

Eighty-two state lawmakers have signed a [letter](#) denouncing the Missouri Supreme Court's rule changes limiting judges from requiring bail. A task force – including prosecutors, defense attorneys, law enforcement and judges – recommended the changes to the court. The high court launched the rules last July.

The rules say judges must first consider non-monetary conditions for pretrial release. The judges can only charge bail fees to help ensure the safety of the defendant's appearance in court. They are also required to speed up when court hearings are held to set or review bail.



State Rep. Justin Hill speaks on the Missouri House floor in February 2017 (photo courtesy of Tim Bommel at House Communications)

GOP State Representative Justin Hill, a former police officer from Lake St. Louis, issued the letter saying the court should pitch the “flawed rules” that make it too difficult for judges to impose bail. He tells Missourinet the high court circumvented the lawmaking process by adopting [House Bill 666](#) as a rule.

“I’ve never seen a more gross violation of separation of powers,” he says. “They need to leave the lawmaking up to lawmakers – the direct representatives of the people. For the Supreme Court to do this, particularly one Supreme Court justice, it’s almost like ruling as an emperor. They can’t select the bills they like and then make it law through rule making. How do we stop this? What’s my recourse? I’m asking lawyers – can I sue the Supreme Court for overstepping their bounds or do I have to sue them in federal court? I don’t know but that can’t happen again.”

Hill says Missouri Supreme Court Chief Justice George Draper III lead the charge to implement the rule changes he calls “disastrous”. During last week’s State of the Judiciary address, Draper said the changes ease inconsistencies with Missouri’s

constitutional mandates to promise bail with sufficient guarantees in all but capital offenses, like murder.

After the rules were released, J.R. Hobbs, a Kansas City defense attorney and task force member, told MissouriNet the court is simply restating federal law. He says increased court cases nationwide show cash bond does not respect one's rights of due process, fair trial and equal protection.

Hill, a member of the Missouri House Judiciary Committee, says the rules essentially allow many felons back out on the streets without using bail to encourage them to show up to court. He says rural Missouri is really feeling the pain.

"Now we have rapists being released. It is akin to literally a policeman making a traffic stop for rape, writes them a ticket saying please come to court. And that's just not going to cut it," he tells MissouriNet. "Monetary bail does something very unique in that it allows the risk of that person to return to court to be underwritten. When I say underwritten, that's a risk assessment of whether or not they're going to flee the country."

Hill gives another example involving a convicted felon suspected in last October's deadly Tequila KC mass shooting. Hill calls the case of Javier Alatorre, 23, "a breakdown in justice".

"The Jackson County Courts – the prosecutor tried to get bond on the criminal, on a felon, and the judge refused it using these new rules. The defendant was released, and a month later killed four people and went to Mexico. We are not looking after who we are all charged at looking after first and that's the public's safety," he says.

Audrain County Sheriff Matt Oller [posted information on Facebook](#) about a convicted felon on the run from law enforcement. He indicates his displeasure with the bail rules and the Missouri Department of Corrections.

According to Hill, the restrictions also add the amount of work for the court system and law enforcement if a defendant does not show up for court. The failure to appear creates a new docket entry or charge against the defendant. Law enforcement officers, with many working for understaffed departments, then must search for the missing individual.

He says court problems in St. Louis County have brought us to where we are today with bail changes.

"I venture to guess there's probably over 30 or 40 of these municipal courts compounding fines on top of people – people that don't have money. They're being held too long for misdemeanor offenses," he says. "Then they're put on probation and they're being held in probation for too long for misdemeanor offenses."

So now what? Hill hopes the court will come to the table and work with the Missouri Legislature to craft "a responsible, narrowly-tailored set of changes meant to improve the judiciary."

"We all want swift justice," says Hill. "We want to make sure that the right person is arrested and convicted. We want to make sure that they're brought to justice quickly. We want to make sure that someone is not sitting in jail because they can't afford bond, but we also want to make sure that the public's safety is our priority."

If they don't come to the table, then we have to go to more extreme measures. That might be calling for the public to remove these justices on the ballot."

Hill has also filed [House Bill 1937](#) in response to the rules. He says the measure would change the order of what pretrial conditions judges can impose on the defendants. The measure is awaiting committee assignment.

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Monday, January 27, 2020

Special Report: A look at new criminal law reforms in New York



Elmira, NY (WENY) -- Two of New York's new criminal reform laws are consistently making headlines, after taking effect on January 1st.

The first law deals with bail reform, and judges not being able to set cash bail.

Someone arraigned on any qualifying crimes could be free while awaiting trial. Included in the bail reform are violent felonies like 2nd-degree manslaughter, vehicular manslaughter or 3rd-degree assault.

The bill prohibits judges from setting cash bail for many other misdemeanors and some other violent felonies. It means even after their initial court appearance, a defendant can walk while they wait to be indicted by a grand jury if the crime is considered a felony. Weeden Wetmore, the Chemung County district attorney argues, some bail reform was needed.

Wetmore says, "I understand the bail reform in a sense that if a person can't afford a bail he's got to sit in jail whereas someone with perhaps financial resources, comes from a family of money he's going to post bail."

What brought this issue to light was a case downstate in new york city. The case, shed light on the state's need to change the bail statute. Shawn Sauro, the Steuben County public advocate, said that particular case gained national attention.

"There was a recent event downstate, having to do with Riker's Island that became the poster case for wanting to change the reform and it had to do with a young man who wound up at Riker's Island," said Sauro.

Sauro is referring to the case of Khalif Browder.

Browder was arrested at the age of 16 but was charged as an adult for allegedly stealing a backpack. He was charged with 3rd-degree grand larceny. Because his family could pay his bail, Browder was

held in Riker's Island for over a year. Later, a video surfaced of him being accosted and harassed by other inmates, while in prison. He was incarcerated for over a year with much of his time being in solitary confinement. He was eventually released but the mental damage was done. He killed himself at the age of 22.

"You're supposed to be innocent until proven guilty," Browder said in an interview on ABC News. "If I would have pleaded guilty no one would have listened to me."

If Browder had been arrested in 2020, he wouldn't have been incarcerated. Among the list of crimes that fall under the new bail law includes grand larceny. The list also includes petty crimes like stalking, jostling and being held in contempt. But Wetmore argues that there's a significant risk to the public when included in that list, are more violent felonies. Dangerous or violent felonies that fall under the bail statute include criminally negligent homicide and aggravated vehicular manslaughter.

"It's a bar fight, the police are called, the person is brought into the police station, he's arrested for assault 3rd, the judge might send him to the county jail, but now the judge says you're released come back on such and such an appearance date," said Wetmore.

With the judge handing down an appearance date and not requiring the defendant to be held, Wetmore says in the circumstances stated above, the person at the bar could theoretically go back to the bar a couple of hours later.

But on the flip side, Sauro says that detaining someone can have a significant adverse effect on their life. Being in jail for just a single day can be life-altering. A defendant, who is still presumed innocent until proven guilty, beyond a reasonable doubt, can lose their jobs, healthcare benefits, and lose access to critical healthcare services.

"When you have indigent defendants and bail is set they can't afford bail. And in many instances if it's a dollar it's a million dollars," said Sauro. "By being incarcerated, it can do a lot more harm than good. In a lot of cases if you weren't indigent when you went to jail, if you can't make bail, by the time you get out, you probably are because you don't have a job anymore."

"Traditionally the district attorneys in Chemung county, and I can only speak for Chemung county, we all try to seek justice. I tell my attorney's to be fair in asking for bail and asking to ensure someone's appearance." Wetmore said.

The new law has already taken a toll on many Finger Lakes counties. A couple of weeks ago, on January 17th, in Bath, NY, 26-year-old Javon Harris was arrested by deputies with the Steuben County Sheriff's Office for grand larceny. On the 18th, he was arrested again by officers with the Bath police department for unlawful imprisonment and public lewdness, less than 12 hours after his first incident. Less than 12 hours after that, Harris allegedly stole merchandise from Tops and was later found to be in possession of a stolen bicycle. For all three of those circumstances, police noted he was released back into the public because the charges did not qualify under the new bail law. On his 4th run-in with the police, Harris was arrested by officers with the Hornell police department on charges of forcible touching, and resisting arrest. Jim Allard, the Steuben County Sheriff, said of the arrests, "It took four arrests to get him (in jail). At what point of time do we realize the rights of victims of crimes outweigh the criminals?" He said. "As much as we try to educate, now people are seeing the real-life effects of this."

Republican new york state senator Tom O'Mara isn't optimistic that there will be changes. He says there won't be a change as long as Democrats hold a majority in the assembly and senate, plus the governor's mansion.

"When this was passed in the budget last year, every Democratic senator voted for it and not one Republican senator voted for it back then. So this is very much spit on party lines," said O'Mara. However, O'Mara has renewed his call for Governor Cuomo and other democratic leaders to repeal the state's new bail reform law immediately. O'Mara says the new law puts public safety at risk by releasing potentially violent criminals back into the community without supervision. He also said this could give some of those violent criminals the chance to threaten victims, and witnesses. O'Mara is currently co-sponsoring legislation to fully repeal the new bail law or impose a year moratorium. By doing that, O'Mara hopes that it'll allow for a statewide public hearing on the matter. But it's a bill Cuomo is standing by.

Cuomo said, "Bail reform is right. You have a criminal justice system that says basically, you get arrested; if you can make bail you're released if you can't you sit in Riker's for two years and get abused until you have your day in court."

For Wetmore, even with the governor's words, he remains skeptical that there will be any changes. He argues that the statute wasn't well thought out and that it was passed without much input from prosecutors.

"I think justice will initially suffer. We're already seeing it downstate with some of the people already being released and that are victimizing other people," said Wetmore.

But other attorneys remain optimistic that changes are on the way. Sauro says that the bill is good and has worked in other states that have passed similar reforms. But Sauro went on to say there still needs to be some amendments to it.

Sauro says, "By allowing some discretion for judges here in New York I think that would go a long way help mitigate some of the concerns."

The second law deals with criminal discovery reform.

"Up until this point in New York state, discovery only has to be revealed at certain points in the case from the district attorney's office and it's usually very late in case", says Sauro.

Part of the discovery reform focuses on getting material evidence on both sides much earlier. The people's evidence now has to be given over to the defense counsel in just over two weeks.

"Now, they don't have to ask. Now within 15 days of arraignment, we have to turn over everything whether they requested it not," said Wetmore.

The Chemung County D.A. says that some material they turnover might be irrelevant to a case, like radio calls from officers to dispatch. But a significant and potentially dangerous issue, in prosecutors' opinions, is handing over grand jury testimony.

Grand jury hearings are sealed, in part to protect a witness's identity. However, Wetmore argues the new law exposes a witness's identity earlier in the criminal process.

Wetmore gives the example of, "If you're a witness to a crime in your neighborhood, and it's your neighbor who held a knife to someone's throat, do you really want him to know that you're cooperating with the police and had gone before the grand jury and testified?"

On the flip-side, having discovery material earlier can help a defendant decide what direction to take. Sauro says before, defendants incarcerated couldn't examine the evidence against them and now some defendants who might have pleaded might instead take their case to trial.

"The people have 15 days to get all the information pertaining to the case, the arrest report and those kinds of things to the defense attorney so that we can make some more meaningful decisions," said Sauro.

How is the new discovery reform hitting home to attorneys in the Southern Tier?

Tom Shen, was facing, a number of charges in connection to the defrauding of a hotel being built on Corning Road in Horseheads. The Tioga County D.A.'s office is moving to dismiss it. Among the factors, they cited that their office is facing limited resources under the state's discovery law. It's a problem shared just down the highway in Chemung County.

'I can tell you that I have three staff members, two secretaries and a clerk that are doing nothing... there not doing their legal secretary responsibilities. They're doing nothing but downloading the materials so they can send them over to defense counsel." said Wetmore.

Wetmore says they've added additional staffer and are looking for more.

"15 days is way too onerous of a time. In that 15 days there's also turning over of witnesses names, not just their contact information but their addresses, their phone numbers, their email address," said O'Mara.

When it comes to criminal reform as a whole, Governor Cuomo agrees that it could use fixing.

"Changing the system which we started to do is complicated and has a number of ramifications.

There's no doubt this is still a work in progress," said Cuomo.

Changes could still be on the way. Particularly with respect to defendants' access to a crime scene.

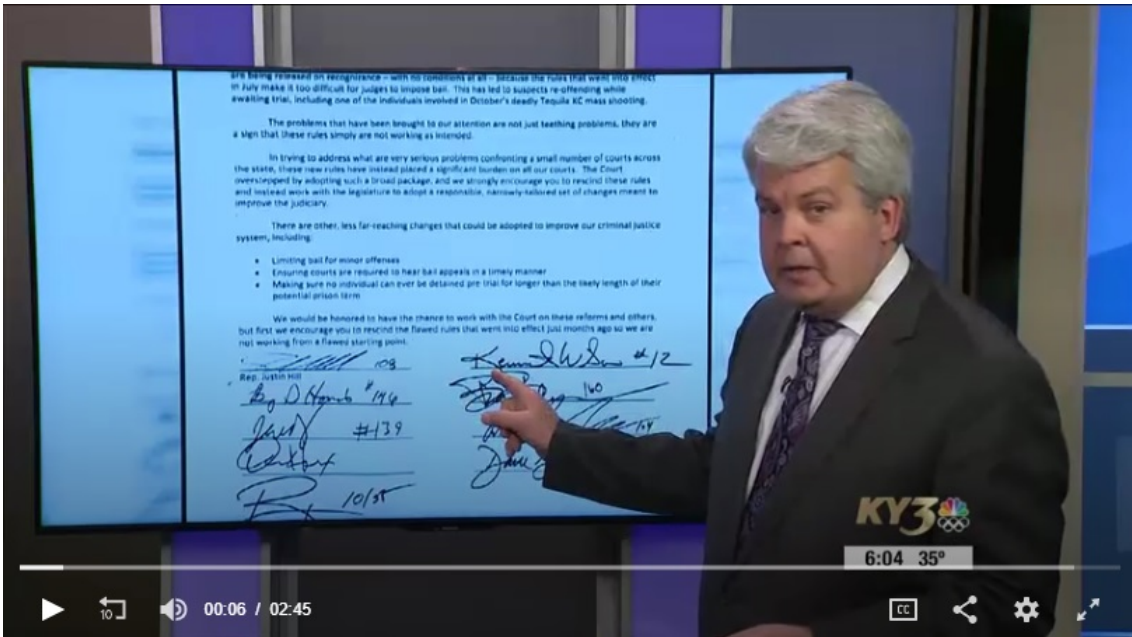
But Sauro argues reform was needed.

"Most of the states in the United States have a similar bail statue and a similar discovery statute and so we're late to the game," said Sauro.

But Sauro adds amendments to the bill could always come up in the future.



Missouri lawmakers ask Supreme Court to undo changes to bail system



By [Sara Forhetz](#) |

Posted: Tue 5:26 PM, Jan 28, 2020 |
Updated: Tue 7:27 PM, Jan 28, 2020

SPRINGFIELD, Mo. -- More than 80 lawmakers say the new bail rules passed last July in Missouri are not working.



Picture: MGN

State lawmakers are denouncing the Missouri Supreme Court's changes that make it too difficult for judges to impose bail.

In a letter to the high court, legislators cited disturbing security video that was captured inside a Kansas City bar that showed two gunmen before they started a mass shooting back in October.

Four people were killed, and five others were hurt. One gunman was able to walk free while awaiting trial on another case, before the mass shooting took place. Law enforcement all over the state says the system is now flawed and criminals are walking free, while awaiting their day in court.

"It's very frustrating. Not only to law enforcement, but to the victims we represent. That is the frustrating part is when you finally do get justice, and someone thinks this person is going to be doing time for committing a crime against me, and they get five years then you see them back in society in 5 or 6 months," said Greene County Sheriff Jim Arnott. He essentially says it pulls a wool over the public's eyes because you hear someone gets 10 years, but in reality, they are not locked away for even close to that.

"Our inmate population-- the vast majority re-offend constantly! Well if they are in prison for 10 years they are not re-offending," Arnott said.

Defense attorney Dee Wampler says the intent was not to keep someone locked up just because they are poor and could not afford bail. He says the new rules, though, could use some tinkering.

Justice Zel Fischer said of the state's changes, "Too many who are arrested cannot afford bail even for low-level offenses and remain in jail awaiting a hearing. Though presumed innocent, they lose their jobs, cannot support their families, and are more likely to re-offend. We have a responsibility to ensure those accused of a crime are fairly treated according to the law and not their pocketbook."

Arnott says what was intended to address a small portion of the population, has become our communities' biggest nightmare.

"Not unless we have a total justice reform, where we have truth in sentencing, and that's going to take a total overhaul of the criminal justice system. In my time, I don't know that I'll be able to see that," Arnott said.

Greene County has been presenting some serious cases to the federal court system, where offenders typically get an actual 10 years, or however long, if that's what is handed down. This is the county's effort to try and reduce crime and get the suspect put in prison.

TOP STORY

Legislators calling for changes to Missouri bail rules

By Matt Hoffmann News-Press NOW

Jan 30, 2020



Reps. Bill Faulkner, R-St. Joseph, Rusty Black, R-Chillicothe, and Jim Neely, R-Cameron were among dozens of legislators who signed a letter asking the Missouri Supreme Court to rescind bail rules put in place last July.
Photo courtesy of the Missouri House of Representatives

More than 80 Missouri state legislators are calling for the Missouri Supreme Court to rescind bail rules it put in place last July.

In a letter initiated by Rep. Justin Hill, R-Lake St. Louis, and signed by dozens of other lawmakers, the legislators call on the court to strip the rules so the legislature and court could work together to formulate new rules.

“The problems that have been brought to our attention are not just teething problems,” a copy of the letter provided to News-Press NOW reads. “They are a sign that these rules simply aren’t working as intended.”

On July 1, 2019, new rules went into place requiring local judges to consider nonmonetary forms of pretrial release for defendants before considering financial conditions like a bond.

“We all share a responsibility to protect the public — but we also have a responsibility to ensure those accused of crime are fairly treated according to the law, and not their pocketbooks,” Chief Justice Zel Fischer said in an address to the Missouri General Assembly in January.

Legislators point to a case out of Kansas City where an individual involved in a shooting was on pretrial release at the time of the incident as an example of the new rules not working.

“Now, individuals who are potentially dangerous or have a history of failing to appear for court are being release on recognizance, with no conditions at all, because the rules that went into effect in July make it too difficult for judges to impose bail,” the legislators wrote in the letter.

Northwest Missouri Reps. Bill Falkner, R-St. Joseph, Rusty Black, R-Chillicothe, and Jim Neely, R-Cameron, all signed the letter.

Brenda Shields, R-St. Joseph, said she wasn’t asked to sign the letter, and that she’d have to consult with Hill before doing so.

An assistant for Rep. Allen Andrews, R-Grant City, said Andrews didn’t sign because he was given short notice to do so. An assistant for J. Eggleston, R-Maysville, said Eggleston didn’t get a chance to read the letter and thus didn’t sign.

Jeffrey Clayton, the executive director of the American Bail Coalition, said he expects the legislature to do something on the issue at some point this session, though he

cautioned that the legislature may decide to launch a study rather than rescind the rules themselves through procedural maneuvering.

“Yeah, I mean, I think it’s pretty fair to say, safe to say, that something’s going to happen,” Clayton said. “It’s just something that we don’t know yet.”

Clayton added that for low-level offenses, and for those who have a history of coming to court, that his coalition isn’t opposed to recognizance bonds. In fact, he said low-dollar bonds are a “nuisance” for each part of the system.

“A \$50 or \$100 bond creates no incentive (to show up for court),” Clayton said.

“Whether it’s the defendant themselves posting or a third party, they’re not going to chase them down and bring them back (to court) for their 50 bucks.”

Opponents of cash bail, like the American Civil Liberties Union, contend that the system disproportionately impacts poor people.

“Poorer Americans and people of color often can’t afford to come up with money for bail, leaving them stuck in jail awaiting trial, sometimes for months or years,” the ACLU wrote in a [blog post](#). “Meanwhile, wealthy people accused of the same crime can buy their freedom and return home.”

Saturday, February 1, 2020

More Calls to Rescind Bail Reform Laws

FEBRUARY 1, 2020 BY KRMS NEWSROOM



Lawmakers in Missouri continue to demand change on a series of bail reform rules issued by the Supreme Court last year. Jeffrey Clayton is the Executive Director of the American Bail Coalition. He says the problems resulting from the rules were inevitable.

▶ **NEWS-2-1-20 Clayton 1** - 1st February 2020

Eighty-two state legislators signed a letter demanding the rules be rescinded. Clayton says they're not opposed to some reforms, but there needs to be more participation to come up with what works.

▶ **NEWS-2-1-20 Clayton 2** - 1st February 2020

The new rules were issued last January and took in effect in July.



FILED UNDER: LOCAL NEWS

Local legislators concerned about bail reform

[BOBBY RADFORD bradford@dailyjournalonline.com](mailto:bradford@dailyjournalonline.com)

February 2, 2020



Local legislators say they have concerns about bail reform laws that have created a catch-and-release pretrial process. [Bobby Radford, Daily Journal](#)

Bail reform laws in Missouri went into effect last summer, and some state legislators aren't convinced that the policy changes have been in the best interest of the public, prompting more than 80 lawmakers to sign a letter delivered to the Missouri Supreme Court demanding the new laws be rescinded.

The reformed rules took effect on July 1, and require judges to consider non-monetary conditions when deciding the pretrial fate of those charged with a crime. A monetary amount can still be set after a judge has first considered the non-monetary options. However, the monetary bail cannot exceed that which is needed to ensure public safety reasonably and ensure the defendant will appear back in court.

In the seven months since the changes, some state representatives have heard concerns from constituents and court officials who say they see the bail reforms creating a “catch-and-release” pretrial process, potentially allowing dangerous individuals to commit more crimes while awaiting trial in other cases.

State Rep. Dale Wright, R-Farmington, is among the state representatives calling on the Supreme Court to address issues with the bail laws.

“Some of us put our name on this paper, letting [the Supreme Court] know that we’re very concerned,” said Wright. “There’s been some defendants that have reportedly committed some pretty heinous acts after being released from the criminal courts without even having to post bail.”

Wright said he was made aware of a notable case from Kansas City and believed that case, along with similar situations, was one of the driving factors bringing legislators to the point of calling on the court for action.

The particular case Wright was referring to involved Javier Alatorre, the alleged gunman in October’s deadly rampage at Kansas City’s Tequila KC Bar. Alatorre has a criminal record, which includes charges of resisting arrest and fleeing from police. He was arrested in Jackson County on a variety of charges a few weeks before the massacre but was ordered to be released from jail on his own recognizance under the new rules.

“One thing that we’ve been trying to do [in the legislature] is help some of the people who are in the state’s prisons shorten their time if they’re not convicted of serious crimes and to be released as working individuals,” said Wright. “When it comes to criminals that are accused of very serious crimes, — first of all, you should be required to post bail to get out, and you should also have some sort of monitoring if that does happen.

“Well, evidently, that’s not happening all the time,” he said. “There are some serious crimes going on, and then the people are brought in before being turned loose without even having to post bail at all.”

Prior court rules directed judges to impose bail only to ensure that defendants returned to court. However, the Missouri Constitution gave judges leeway to deny bail or set limits on release as a way to protect victims or ensure public safety.

Thoughts on the matter seem consistent among local legislators.

Although Rep. Chris Dinkins, R-Annapolis, was not able to sign the letter headed to the court last week, she said that she certainly would have.

“I spoke with the representative who started the letter...,” Dinkins said. “He said it was signed on the winter snow day where we all left early, and he just grabbed whoever he could, but I do support what they’re doing.”

Dinkins recalled that as recently as last Tuesday, she had a few constituent bail bondsmen come to her office, advocating for some changes to get the laws restored to what they originally were.

“The current system is not working and we need to do something to get it fixed,” she added. “I pity those that are trying to work with what they have. I’ve spoken with judges, prosecuting attorneys, and bail bondsmen, and it doesn’t seem that anybody feels like [the bail law reform] is working like it was supposed to work.”

Rep. Mike Henderson, R-Bonne Terre, said he too would have signed the letter if he could have.

“I didn’t sign the letter, but I would have,” explained Henderson. “They just didn’t get to everybody. I think they could have gotten a lot more signatures than what they did. It was kind of a last-minute thing, but everybody’s been kind of upset.

“I’ll be honest; I was all in favor when [the governor] said we need to be smarter on crime, and I agree with that,” Henderson said. “But when the Supreme Court redid the bail rules, they basically created law, in my opinion, instead of interpreting law which is what they’re supposed to do and consequently, I’ve had a lot of people in the district reach out to me about what they call catch-and-release.

“They catch people doing things and immediately they’re back on the street with no real way of holding them accountable,” he said. “I just don’t see that as a smart way to deter crime in our communities.”

Henderson went on to say that he has no desire to see people locked up just because they’re poor. He said he would love to try to find a balance and make sure innocent families aren’t being destroyed by the legal process while, at the same time, protecting other families in St. Francois County.

It’s uncertain how the court will react to the call for changes from representatives, however, the forthright gesture of addressing the high court sent a message that a significant portion of Missourians don’t believe the new laws are working the way they were intended.

Wright echoed Henderson’s sentiments regarding the separation of powers between the legislative and judicial branches of government.

“That’s not really [the Supreme Court’s] job,” said Wright, referring to the new policies which he believes effectively changes the law. “They don’t create the laws. They’re supposed to interpret the laws, so I think you’ll see some new legislation come out on this.”



BAIL REFORM

As City Sees Uptick in Crime, NYC Mayor Calls for Bail Reform Adjustment

Having a fair bail system with a dangerousness standard “would help us to be safer,” De Blasio said

By [Jonathan Dienst](#) and [Jon Schuppe](#) • Published February 5, 2020



EFE

Amid a quick but notable uptick in crime last month, New York City’s mayor again called for judges to have the power to determine ‘dangerousness’ when deciding whether or not to release a defendant on bail.

“Judges ... need to be given the discretion to understand if someone poses a greater threat, but with real strong checks and balances,” Mayor De Blasio said Tuesday.

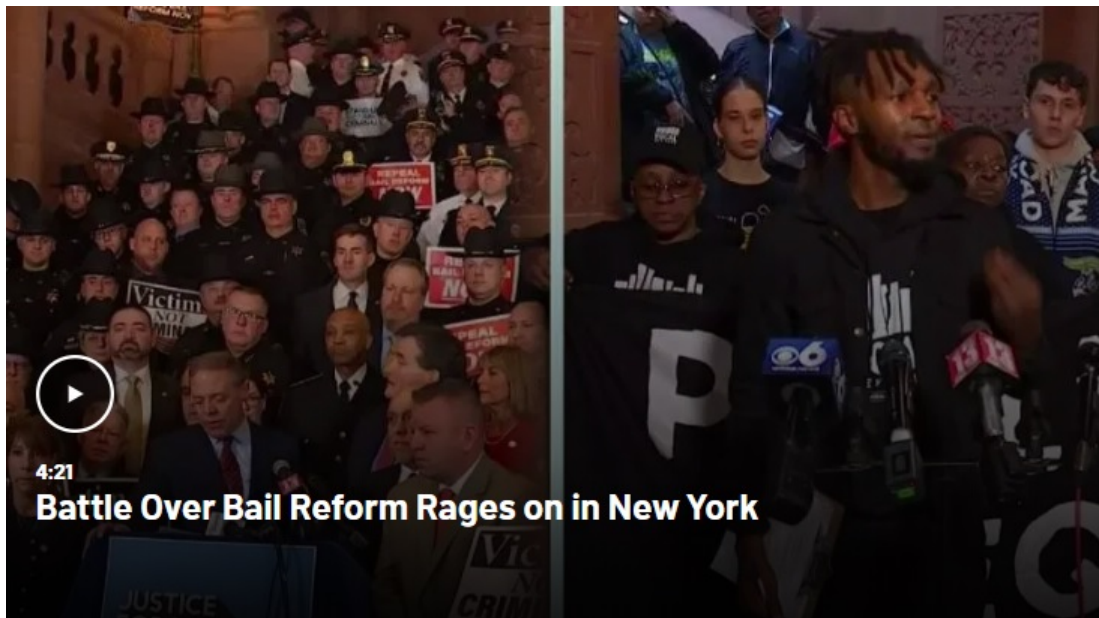
Some NYPD officials have pointed to repeat offenders out on bail as one of multiple reasons for a jump in robberies, assaults and grand larcenies across the city.

Under the new bail law, many offenders are being released with no bail as judges are not allowed to consider the level of danger the person presents to the community, only if the suspect will likely show up for court.

The movement to eliminate bail aims to make the system fairer for poorer residents, who are far more likely to get stuck in jail while awaiting trial. That makes them more likely to lose their jobs and to plead guilty, even if they are innocent, experts say. Many borrow bail money from bondsmen and then end up in debt. Wealthier people, meanwhile, can use their more extensive resources to buy their way out of pretrial detention on just about any charge, from shoplifting to murder.

Opponents of the new law have publicized cases of suspects set free — bank robbers, repeat burglars, manslaughter suspects, an alleged hit-and-run drunk driver — which they say demonstrate how doing away with bail allows dangerous criminals to remain on the streets. Perhaps the most notorious case is that of Tiffany Harris, a Brooklyn

woman who was released after she was alleged to have hit three Jewish women in different bias attacks, only to be arrested the next day and accused of an assault on another woman.



The mayor said judges should be trusted to make decisions on threat to public safety when making bail so long as “clear and sharp guidelines” are in place to prevent any unfair bias along economic, ethnic or racial lines.

Having a fair bail system with a dangerousness standard “would help us to be safer,” De Blasio said.

Gov. Cuomo has expressed reservations about passing a dangerousness standard but said bail reform continues to be a work in progress. NYPD Commissioner Dermot Shea and the mayor spoke with Assembly Speaker Hastie (D-Bronx) Tuesday morning saying they believed some progress was being made to satisfy all sides in the debate. A spokesman for Heastie did not return a request for comment.

“While the NYPD does what it always does dealing with everything thrown at it there is an important dialogue with our state leaders about the best way to move forward.”

Queens State Senator Michael Giannaris (D-Queens), a key supporter of bail reform, has said the good of the bail reform law outweighs the bad.

"The hysteria around the situation completely ignores the fact that people have been released and accused of horrible things for a long time," said Michael Gianaris, the deputy Democratic leader of the state Senate, who sponsored the bail reform law. Under the traditional bail system, the people who got released "had the money to buy their freedom," he said.

"For every story that gets sensationalized, there are hundreds of people who have been able to keep their jobs and remain with their families while accused of low-level crimes," he said.

In comparing January 2020 to the same time last year, robberies in NYC are up 36 percent, burglary up 20 percent and car thefts up 72 percent with overall crime up 16 percent. Shea said bail reform may be partly to blame, but did not provide a specific breakdown for how much of the increase might be linked to more criminal suspects making bail.

“What if someone is not a flight risk, but for very specific and objective reasons could be a threat to the surrounding community. There is a way I think ... to address that real world condition and I think it can be done equitably,” De Blasio said. “I think we can walk and chew gum at the same time.”



Missouri laws give lawbreakers a get out of jail free card

by Matt Gunn | Wednesday, February 5th 2020



This past July the Missouri Supreme Court passed laws that were intended to prevent nonviolent offenders from being stuck in jail merely because they cannot afford bail. (MGN Online){/p}

KIRKSVILLE, Mo. — This past July, the Missouri Supreme Court ordered "significant changes to its rules governing pretrial release." These changes were intended to prevent nonviolent offenders from being stuck in jail, merely because they cannot afford bail.

The order has been active for about six months.

The American Bail Association and other critics have noted an unwelcome effect of the legislation. They say that judges' hands are effectively tied with regards to setting bail amounts.

In some cases, the new laws make it impossible to impose bail on many offenders.

Defendants are then released, some of whom have re-offended while awaiting trial.

Critics of the laws appealed to the Missouri Supreme Court in a January letter. One of the examples they gave was a Missouri defendant who then was charged as a gunman in October's deadly rampage at Tequila KC Bar in Kansas City, Kansas.

The suspected killer was arrested on a variety of charges weeks prior to the massacre. The new rules released him on his own recognizance.

More than 80 lawmakers signed a letter to the Missouri Supreme Court in January. The letter called for the high court to work with the legislature to adopt a "responsible" and "narrowly-tailored" set of changes designed to improve the system.

KTVO spoke with Adair County Sheriff Robert Hardwick to get his thoughts on the new laws.

"These individuals that are being released are not housed and in jail when they should be when they're violent and there's been some people hurt and killed as a result of this ruling and situation from the Supreme Court and the general public and the state of Missouri needs to be aware of what's taking place because this jeopardizes the safety of everyone in the state of Missouri," Hardwick said.

Missouri judges can set bail under the new rules, but only at an amount necessary to ensure either the public's safety or that the defendant will appear in court.



Why Are So Many Politicians Trying to Outlaw Bail?

Accused criminals, after being released without bail, aren't showing up for trial

By [Katy Grimes](#), February 10, 2020 2:42 pm

In August 2018, then-Gov. Jerry Brown signed [Senate Bill 10](#) into law, ostensibly to reform the cash bail system. However, Before SB 10 could have gone into effect, [Californians Against the Reckless Bail Scheme](#) fought the legislation on two points: it would result in the release of violent offenders to the streets, and would kill a \$2-billion national industry, as well as the 3,200 bail agents in California. The group collected nearly 600,000 signatures in 70 days to put SB 10 on the November 2020 ballot, to allow California voters to decide whether or not to replace cash bail with risk assessments for suspects awaiting trial.

But risk assessments aren't the answer, according to [110 civil rights groups](#), which have opposed the risk tools, including the ACLU, Civil Rights Corp, Upturn, and the NAACP, the American Bail Coalition reports.

SB 10 by Sen. Bob Hertzberg (D-Los Angeles) and Assemblyman Rob Bonta (D-Oakland), would eliminate bail, which bail bondsmen and attorneys say is a vital tool that ensures people arrested for crimes will return to court for their trials, *California Globe* [reported](#) in April.

Bail are the terms imposed upon a person that such person must meet in order to be released from jail pending trial, the American Bail Coalition [explains](#). When a person is arrested, bail will be set for that person by a judge. In many cases, bail is set by a fixed bail schedule. In most cases, the bail industry saves cities and counties millions of dollars every year by getting defendants to court.

So why are so many politicians trying to outlaw bail? Some politicians and judges claim bail provides an unfair advantage only to those who can afford it. Notably, for low level offenses, defendants are often cited and released, or released on their own recognizance.

[Federal Judge Yvonne Gonzalez-Rogers](#), an Obama appointee in Oakland, exemplified this new anti-bail thinking when she ruled the bail schedule is unconstitutional, because she says it is unfair for the poor languishing in jail pretrial because they cannot afford bail.

This is all part of the effort to eliminate the bail bonds industry, under the guise of discrimination.

The bail schedule is developed by judges in each county, which Judge Gonzalez-Rogers ruled is unfair to the poor, thus sheriff's departments will no longer be able to use (the new conditions are stated within ruling).

At a time when police and sheriff's departments are short officers, deputies and investigators, what this really amounts to is an announcement to all criminals "come to California and you will be released within hours."

However, California isn't the only state attempting to do away with cash bail. [Jeff Clayton](#), President of the American Bail Coalition spoke with California Globe in a recent interview, and said Larry Krasner, District Attorney in Philadelphia, who had promised to fundamentally transform the city's criminal justice system during the election, dramatically cut the use of the bail industry resulting in gun-related violent crime [rising](#), a [demoralized](#) police force, and victims of crimes, their families, and advocacy groups feel [betrayed](#).

And New York just abolished bail for most crimes. “What they’ve done, is people get out of jail automatically,” Clayton said. “The guy who robbed 16 banks but was let out over and over – the feds finally picked him up.”

Passage of these new “bail-reform” laws could put more most bail-bond companies out of business, according to bail agents.

Effectively, New York judges are prohibited from requiring bail of pretrial defendants for misdemeanors and nonviolent felony charges under new criminal-court regulations that took effect Jan. 1, 2020.

If this seems like the definition of insanity, you’d be correct.

San Francisco District Attorney Chesa Boudin [announced](#) a policy in January that will end cash bail for those being released from custody, KUSI [reported](#). “The DA’s office says those being held ahead of their trial will now be based on the risk rather than wealth and poverty. This means people who may be a threat to the community will remain in custody, regardless of how much money they have.”

Chesa Boudin, 39, is the radical leftist activist lawyer, raised in Chicago by Weather Underground leaders Bill Ayers and Bernardine Dohrn, recently elected in a special election to San Francisco District Attorney. Boudin was also Hugo Chavez’s trusted propagandist, translator and advisor.

Presidential Candidate Bernie Sanders says he’ll follow in Boudin’s ‘no cash bail’ footsteps if he becomes president.

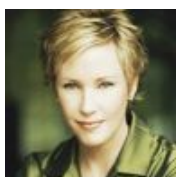
As for California’s “reforms,” these are a few examples of crimes committed by “low level” offenders in California, released under the pretrial risk assessment program. They were let out before seeing a judge, and before bail could be assigned:

- Illegal possession and transporting a machine gun
- Machine gun conversion
- Possession of a silencer
- Transportation of assault weapon
- Manufacture of an unsafe handgun
- Large capacity magazine activity
- Possession of a deadly weapon: short barrel rifle/shotgun
- Forcible rape
- Sodomy by use of force
- Lewd Act upon a child
- Human trafficking
- Sexual penetration with a foreign object
- Intent to transmit sexually transmitted disease
- Kidnapping
- Stalking
- False imprisonment
- Contributing to the delinquency of a minor

When we last spoke with Jeff Clayton, he said the California Legislature and Gov. Jerry Brown knew that these risk assessments were flawed when they passed SB 10, but then immediately followed it up with this pretrial funding request in the budget. They were well aware of the flaws because the [Leadership Conference on Civil Rights](#) in the summer of 2018 came out against these risk assessments, as did over [50 civil rights groups](#) in California.

But there was an agenda to fulfill.

“In [San Francisco](#), an individual who was on felony probation, had been re-arrested, then released pretrial based on a judge’s discernment after evaluating the Arnold Foundation tool, later killed a 71-year-old man,” *Inside Sources* [reported](#). “More than a third of those released in San Francisco as a result of the assessment were either booked on a new offense or failed to appear, according to a [study](#).”



Katy Grimes

Katy Grimes, the Editor of the California Globe, is a long-time Investigative Journalist covering the California State Capitol, and the co-author of [California's](#)

THE APPEAL



Photo illustration by Elizabeth Brown. Photo from Getty.

Dawn R. Wolfe

Feb 12, 2020

CRIMINAL JUSTICE GROUP DROPS SUPPORT FOR PRETRIAL RISK ASSESSMENT TOOLS AS OHIO JUSTICES SEEK TO BLOCK THEIR USE

Reform advocates say the risk assessments are racially biased and are not effective at their key tasks: predicting the likelihood someone will return to court.

An influential criminal justice organization has renounced its support of pretrial risk assessment tools as a growing chorus of voices question their effectiveness and criticize them as being inherently racially biased.

The change in position comes just weeks after the Ohio Supreme Court stripped language from proposed criminal justice reforms that would have required all judges in the state to be provided with pretrial risk assessment tools.

One of the first pretrial risk assessment tools was developed by the Vera Institute of Justice in the early 1960s, building on the work of parole risk assessment tools, some of which had been in place since the 1930s. Pretrial tools were intended to decrease pretrial mass incarceration and alleviate racial bias in the court system. The goal was to provide judges with a data-driven criteria they could use when deciding whether and under what conditions to release a person pending trial.

The Pretrial Justice Institute, which had continued to support pretrial risk assessment tools in the face of increasing opposition to them, reversed its long-held position on Friday, saying in a statement, “We now see that pretrial risk assessment tools, designed to predict an individual’s appearance in court without a new arrest, can no longer be a part of our solution for building equitable pretrial justice systems. Regardless of their science, brand, or age, these tools are derived from data reflecting structural racism and institutional inequity that impact our court and law enforcement policies and practices. Use of that data then deepens the inequity.”

Pretrial Justice Institute Executive Partner Meghan Guevara told The Appeal that the organization’s change of heart “has been in process for the past two years.” For years, the organization saw the emergence of pretrial risk assessments as “a step in the right direction” to decrease court systems’ reliance on money bonds. After working with civil rights advocates and others, however, “we’ve gained a greater understanding of the fact that the data that goes into developing those tools and scoring those tools is just inherently racially biased. And there is no way around that,” she said.

While an estimated 1,000 U.S. counties are using pretrial risk assessment tools, new research — most recently by Media Mobilizing Project and MediaJustice — suggests that the tools are having little impact on pretrial incarceration rates. That work mirrors the findings of other organizations in recent years. Insha Rahman, director of Strategy & New Initiatives for the Vera Institute of Justice, told The Appeal that her organization “really started to sound the alarm” about the tools after a 2016 ProPublica report that showed glaring racial disparities in the outcomes of more than 7,000 people arrested in Broward County, Florida, in 2013 and 2014.

According to that report, ProPublica did a statistical test to isolate the effect of race from criminal history, recidivism, age, and gender. Even with those variables isolated, “Black defendants were still 77 percent more likely to be pegged as at higher risk of committing

a future violent crime and 45 percent more likely to be predicted to commit a future crime of any kind.”

Academics and reform advocates say that disparate racial outcomes are only one of the issues with the assessment tools. In July, 27 researchers from MIT, Harvard, Princeton, NYU, UC Berkeley, and Columbia submitted a statement of concern about the tools to criminal justice policy makers in California, the city of Los Angeles, and Missouri.

“Actuarial pretrial risk assessments suffer from serious technical flaws that undermine their accuracy, validity, and effectiveness,” the statement says. Among other problems, it says the tools use “inexact and overly broad” definitions of risks and that “no tool available today can adequately distinguish one person’s risk of violence from another.” In addition, the academics say, “people of color are treated more harshly than similarly situated white people at each stage of the legal system, which results in serious distortions in the data used to develop risk assessment tools.”

As a result of these flaws, the statement says, “These problems cannot be resolved with technical fixes. We strongly recommend turning to other reforms.”

Developments in Ohio suggest that at least some criminal justice officials are starting to hear those concerns. On January 15, the Ohio Supreme Court submitted criminal justice reform proposals to the state’s General Assembly that eliminated a task force’s recommendation that a “validated risk assessment tool” be provided to all the state’s judges. The justices voted 5-2 to strike that language. Under a 1968 reform to Ohio’s state Constitution, the state legislature can vote only to either accept or reject the entire package of proposed criminal justice reforms. If the General Assembly doesn’t take action by July 1, they will take effect automatically.

The court’s justices were persuaded to drop pretrial risk assessments by the American Civil Liberties Union of Ohio, according to a January 24 report on the decision by Cleveland.com. In an email to The Appeal, Policy Director Jocelyn Rosnick explained that the national ACLU took a public stance against the use of pretrial assessments in its March 2019 report, A New Vision for Pretrial Justice in the United States, which says that “Risk assessment instruments have not been shown to fix bias in pretrial decision-making, even as a supplement to decisions made by judges.”

“Risk assessment tools vary in the criteria they use. However, criminal history is largely included across the board,” Rosnick added. “This leads to racially biased outcomes.” According to 2017 figures released by the U.S. Department of Justice, the prison incarceration rate for Black men is more than five times that of white men, while Black men are three times more likely to be incarcerated in jails.

Further, Rosnick said, there's no proof that the risk assessments are actually effective at their key tasks: predicting the likelihood someone will return to court, and predicting how likely it is that an arrested person will commit violence if released pending trial.

"There simply haven't been robust studies showing that these tools actually work — meaning, if they are more accurate than judges, less biased than judges, or even improve on judicial decision-making," she wrote.

In their July statement, the academics from MIT, Harvard, Columbia, Princeton, NYU, and UC Berkeley, reached the same conclusion, saying, "Within jurisdictions that have achieved positive outcomes, it is uncertain whether the risk assessment tools were responsible for that success or whether that success is due to other reforms or changes that happened at the same time."

Ohio Supreme Court Chief Justice Maureen O'Connor was one of two justices who voted to retain the language requiring the state's judges to be provided with pretrial risk assessments. "The tools are just that — tools. They are no substitute for the discretion of the judge," O'Connor told the Appeal. "Risk assessments are used every day and will continue to be used by judges who realize their value."

In response to allegations that the tools perpetuate racial disparities, O'Connor said that "the claimed bias is due to the fact that a minority defendant may have more past convictions, and that is just a statistic that is real. It is imperative that a judge appreciate that and determine the value of that information."

Insha Rahman, of the Vera Institute of Justice, said overly-broad judicial discretion is at the heart of the problem of mass pretrial incarceration whether or not a given court system uses a pretrial assessment tool.

"The jurisdiction can choose to not use them, and still have tremendous racial disparities and over-incarceration as a result of unfettered judicial discretion," she said. "Or a jurisdiction can choose to use them and also still have those same problems, and the reason why is because risk assessment instruments are essentially a shortcut for, say, questions and the inquiry that judges should be making at the pretrial stage."

Both Rosnick and Guevara also disagreed with O'Connor, saying that pretrial justice reform can be accomplished in other ways.

"There should be a broad presumption of release for most people; there should be a hearing within 48 hours of detention with access to counsel. Only the minimum

necessary conditions should be set — things like employment or reporting requirements — and an ability to pay determination should occur prior to the use of money bond,” Rosnick said. “Additionally, risk assessment tools do not consider ways in which risk might be mitigated by support measures. For example, texting reminders by the court are a simple, cost-effective tool that studies show can increase court appearance rates.” One study in New York City found that texting reminders increased court appearance rates by 26 percent.

Guevara added that the choice isn’t as binary as the Chief Justice implied. “It is important to remember that systems don’t need to choose between being ‘money-based’ and ‘risk-based.’ Judges have the authority to weigh the information available to them and make a bail determination that doesn’t involve money without needing a risk assessment tool,” she said.



LA County Will Try Bail Reform, But Critics Say It's Going About It All Wrong

BY [SHARON MCNARY](#) IN [NEWS](#) ON FEBRUARY 12, 2020 6:00 AM



(Gustavo Caballero/Getty Images for UNITAS)

Los Angeles County is moving ahead with a bail reform pilot program, despite warnings from criminal justice reform advocates that the program's reliance on computerized risk assessment tools will perpetuate racial discrimination against defendants.

There are some 7,500 inmates in L.A.'s jails on any given day waiting for their trials. On Tuesday, the Board of Supervisors approved the \$17 million pre-trial release program, which seeks to increase the number of inmates who can safely be released before trial.

Under the two-year pilot program, every person who is arrested and held for arraignment will qualify.

Officials will conduct assessments using two separate tools that rely on computer algorithms to measure risk to the community.

A judge will receive at least one of the assessments at arraignment, while some defendants will have two different assessments. Those deemed low risk will be released without bail on their promise to reappear at future hearings. The judge can also request that those individuals get certain services, like mental health referrals.

The County Probation Department will oversee the pilot.

Critics of cash bail have long argued that it discriminates against poorer defendants, and can cause people to lose their jobs and get evicted. [A new state law that would largely eliminate cash bail is on hold](#); the bail bond industry got enough signatures to place a measure on the November ballot that would kill the law.

JusticeLA, a coalition of advocacy groups, [wrote a letter to the supervisors](#) opposing the pilot, arguing that [numerous experts have argued that risk assessment tools are inherently discriminatory](#).

The coalition noted that the Pretrial Justice Institute, a Maryland think tank, has reevaluated its previous support of risk assessment tools, [and now says they should never be used](#). In a Feb. 7 statement, the Institute said the tools "are derived from data reflecting structural racism and institutional inequity," and their use "deepens the inequity."

The algorithms used in the risk assessment tools "are the same kind that they used historically to determine if somebody was eligible for home insurance or something like that," said JusticeLA spokesman Lex Steppling.

JusticeLA also said the Probation Department should not oversee the pilot, because it's already struggling to manage its current budget and facilities.

LA County's jails on a typical day hold some 17,500 inmates, with about 44 percent of them behind bars awaiting trial.

The money for the pilot project comes from a grant of state money via the Judicial Council of California. The legislature provided \$75 million statewide for 10 counties to try pilot bail reform programs.

Pretrial Justice Institute Reverses Course on Risk Assessment

FEBRUARY 12, 2020 BY KRMS NEWSROOM



A system of assessing risk to the public that is cited as the basis for bail reform across the country is flawed. That's according to one of the nation's leading criminal justice advocacy organizations. The Pretrial Justice Institute issued the statement on their [website](#) in what is being described as a 180-degree reversal on their previous position. PJI says they now see that "pretrial risk tools, designed to predict an individual's appearance in court....can no longer be a part of (the) solution for an equitable pretrial system." PJI had previously touted risk assessments as being a more fair tool than a cash-based bond system.

CALIFORNIA★POLITICAL
REVIEW

PRETRIAL JUSTICE INSTITUTE ADMITS LONG-HELD ADVOCACY OF RISK ASSESSMENT TOOLS WAS WRONG

February 12, 2020 By Stephen Frank

Those supporting “risk free-cashless” release from jail have long depended on the Justice Institute Study on this subject. Now the organization admits they were wrong in their assumptions and data.

“One of the nation’s leading criminal justice advocacy organizations has reversed course 180 degrees on its long-standing position regarding the use of pretrial risk assessments as the singular key to the fair handling of persons arrested and charged with a crime.

The Pretrial Justice Institute (PJI) issued a statement on its website (www.pretrial.org) last week, declaring, “We now see that pretrial risk tools, designed to predict an individual’s appearance in court without a new arrest, can no longer be a part of our solution for building equitable pretrial justice systems.”

The change in position of the organization that for years had based its fundamental mandate on risk assessment policies was considered a shocking turn of events by those who had long-contested PJI’s assertion that the tools functioned as claimed.

California is going cashless—but due to a referendum, that law is not being used until the people vote. But San Fran has a DA that issued an edict that criminals can be released without bail. Watch as crime continues to go up in that and surrounding cities.



Photo credit: Michael Coghlan via Flickr

PRETRIAL JUSTICE INSTITUTE ADMITS LONG-HELD ADVOCACY OF RISK ASSESSMENT TOOLS WAS WRONG

American Bail Council, 2/11/20

Lakewood, CO (February 11, 2020) – One of the nation’s leading criminal justice advocacy organizations has reversed course 180 degrees on its long-standing position regarding the use

of pretrial risk assessments as the singular key to the fair handling of persons arrested and charged with a crime.

The Pretrial Justice Institute (PJI) issued a statement on its website (www.pretrial.org) last week, declaring, “We now see that pretrial risk tools, designed to predict an individual’s appearance in court without a new arrest, can no longer be a part of our solution for building equitable pretrial justice systems.”

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“We feel vindicated by the Pretrial Justice Institute finally admitting what many of us involved in the criminal justice system have contended all along,” said Jeff Clayton, Executive Director of the American Bail Coalition. “Regrettably, reversing the damage caused by PJI’s advocacy of these policies will take many years, if not a decade, to undo.”

PJI had long-touted risk assessment tools as far more fair than the accountability-based cash bail system.

Key to bail reform efforts, which have swept the nation in recent years, the algorithms behind the tools determine who stays in jail and who gets out. A score is calculated from a host of factors, including the age at which a person was first arrested and any history of substance abuse. Those who are considered “low” or “medium” risk are released for free outright or with supervision, while those determined to be “high” risk are kept in jail with no recourse.

The accuracy of risk tools has been called into question by scholars ever since the publication of a *ProPublica* article in 2016 that determined they were “biased against blacks.” Last July, 27 researchers from Harvard, Princeton, MIT, Columbia, NYU and UC Berkeley issued a joint statement saying the algorithms suffered from “serious technical flaws that undermine their accuracy, validity, and effectiveness.” It also noted that “for the same conduct, African-American and Latinx people are more likely to be arrested, prosecuted, convicted and sentenced to harsher punishments than their white counterparts.”

Law enforcement groups, prosecutors and victims’ rights groups, as well as the commercial bail industry, were among those who disputed PJI’s claims of the infallibility of risk assessment tools over the years and whose positions were upheld by the organization’s complete capitulation on its previously immovable position.

Jeff Clayton added, “We have been calling to end ineffective pretrial risk assessments since 2015. PJI’s decades-long advocacy of preventative detention policies, risk assessment tools, and supervision matrices, which were all the building blocks of unnecessarily trammeling the basic civil liberties of defendants, has caused lasting damage to our system of justice and the right to bail.”

About the American Bail Coalition

The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States. Comprised of the nation’s largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilizes its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions. www.ambailcoalition.org

THE APPEAL



NEW YORK DEMOCRATS ARE CAVING ON BAIL

Sarah Lustbader

Feb 13, 2020

Spotlights like this one provide original commentary and analysis on pressing criminal justice issues of the day. You can read them each day in our newsletter, [The Daily Appeal](#).

“Under pressure from law enforcement, state lawmakers say they are now willing to make significant changes to the [bail reform laws](#) that have been in effect for less than two months,” Christopher Robbins [wrote for Gothamist](#) yesterday. “Currently, [judges are prevented from setting bail on almost all misdemeanors and non-violent felonies](#), but violent crimes and some lower level charges that involve domestic violence are still bail eligible. Judges [are required](#) to only consider a defendant’s risk of not returning to court, not their past criminal record. The proposed changes would erase cash bail from the system, but would instead allow judges to indefinitely jail suspects charged with felonies

and some misdemeanors before trial based on their prior criminal records or their risk of not returning to court.”

“We believe that this gets to the heart of the issues and that it is still progressive,” Senate Majority Leader Andrea Stewart-Cousins told [Newsday](#), when she announced the proposed changes.

Stewart-Cousins’s proposals contradict the “recommendations of the [New York State Justice Task Force](#), a group of judges, district attorneys, and police commanders tapped to advise state lawmakers while they were crafting the reforms,” [Robbins writes](#). “The task force explicitly told lawmakers to [leave the dangerousness standard out](#) of the law that eventually passed.”

Tina Luongo, the attorney-in-charge at the Legal Aid Society, said the proposal was “a cave to fearmongering of law enforcement and DAs.” It would also be “a response to criticism from judges, prosecutors and police that the current bail law — which is just six weeks old — had taken away their power and discretion to detain dangerous suspects,” [writes Yancey Roy](#) for Newsday.

“Judicial discretion — meaning the harsh and improvident exercise of judicial discretion — is what led to the crying need for bail reform in the first place,” Law professor Steve Zeidman, who directs the CUNY Law Criminal Defense Clinic, told Gothamist. “The notion that reforming bail reform means giving judges greater discretion would be funny if it weren’t so tragic.”

Criminal defense attorney Ron Kuby recently noted in a [Daily News Op-Ed](#), “Judges afraid of winding up on the front pages like [“Turn ‘Em Loose Bruce”](#) would lock people up before trial if they had a hunch that they might re-offend. And most of New York City just went along with it.” He added, “The bail reform laws enacted last year eliminated judicial discretion for many cases in order to prevent exactly these types of injustices from recurring. Judges proved, over decades, that they could not be trusted.”

Anxiety about judicial discretion was one of the main reasons for [progressive opposition](#) to California’s attempt to overhaul its bail system in 2018.

Over the past 40 years, give or take, the American criminal system has experimented with granting judges more discretion and constraining them, in efforts to curb excesses and discrimination. The results have consistently yielded more excesses and discrimination. Mandatory minimum sentences have been on the books in various states [since the 1950s](#) and Congress adopted the Federal Sentencing Guidelines and many mandatory minimums under the Sentencing Reform Act of 1984. These were a direct response to sentencing disparities and came with [lofty goals](#), like increasing consistency, fairness, accountability, and transparency. And they did [initially succeed](#) in reducing some sentencing disparities among judges, but were soon rightly criticized for rigidity, excess, and for taking power away from judges and bestowing it on prosecutors.

Almost two decades later, in the case *United States v. Booker*, the Supreme Court made the guidelines advisory, although mandatory minimums remain mandatory. But

Harvard Law School Professor Crystal Yang conducted an [analysis](#) of people sentenced between 1994 and 2009 and concluded that racial disparities increased significantly after the Booker decision. Black defendants were “more likely to be sentenced above the Guidelines recommended range, and less likely to be sentenced below the Guidelines recommended range, compared to similar white offenders.”

In the latest effort to rid the system of bias and decrease judicial discretion, many states and the federal government are turning to [predictive algorithms](#) and [risk assessment tools](#) to help determine pretrial detention decisions and sentences, an endeavor that critics warn could also exacerbate and enshrine racial disparities.

“Nearly every state in America has turned to this new sort of governance algorithm, according to the Electronic Privacy Information Center, a nonprofit dedicated to digital rights,” [Cade Metz and Adam Satariano reported](#) for the New York Times recently. “As the practice spreads into new places and new parts of government, United Nations investigators, civil rights lawyers, labor unions, and community organizers have been pushing back.” They worry that biases, including the race and class of the people who create the algorithms, are being baked into these systems, as [ProPublica](#) has reported. Critics note that Black and Latinx defendants have been found to be more likely to be flagged as “high risk” than white people because the tools rely on factors that are shaped by racial disparities in policing, like arrest history or ZIP code. But activists are often kept in the dark about those inputs because some algorithm-makers will not disclose their formulas.

“In San Jose, California, where an algorithm is used during arraignment hearings, an organization called Silicon Valley De-Bug interviews the family of each defendant, takes this personal information to each hearing and shares it with defenders as a kind of counterbalance to algorithms,” [Metz and Satariano write](#).

Nyssa Taylor, criminal justice policy counsel with the ACLU-Pennsylvania, [told the Times](#) that she is concerned that algorithms will exacerbate rather than reduce racial bias. Even if the algorithms are not kept secret, the math is sometimes too complex for most people. “All machine-learning algorithms are black boxes, but the human brain is also a black box,” [countered Richard Berk](#), the University of Pennsylvania professor who has designed various algorithms used by the local criminal system. “If a judge decides they are going to put you away for 20 years, that is a black box.”

Ethan Corey recently [reported for The Appeal](#) that a comprehensive [report](#) documenting the use of risk assessment tools “shows little evidence that the tools are leading to reductions in pretrial incarceration rates or eliminating racial disparities in pretrial release decisions.” Two organizations, Media Mobilizing Project and MediaJustice, put out the database [Mapping Pretrial Injustice](#), accompanied by a report documenting in-depth interviews with officials, which revealed that although use of risk assessment tools is widespread, few jurisdictions are monitoring whether the tools serve their intended goals.

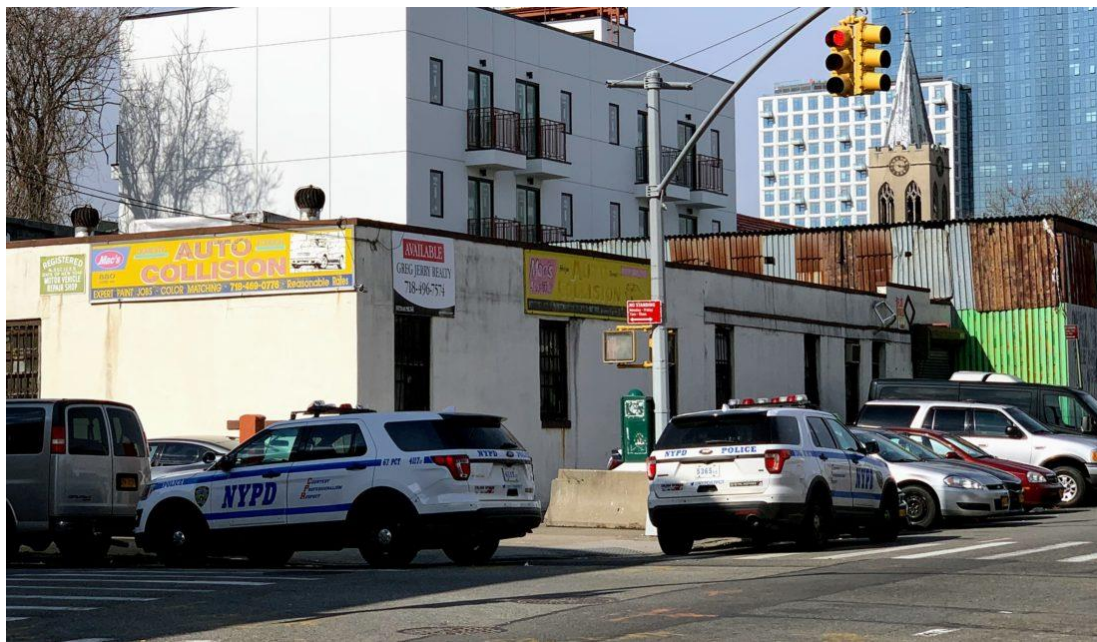
In a surprising reversal, the Pretrial Justice Institute, an organization that advocates for pretrial reforms, announced last week that [it no longer supported](#) the use of risk

assessments. “We now see that pretrial risk assessment tools, designed to predict an individual’s appearance in court without a new arrest, can no longer be a part of our solution for building equitable pretrial justice systems,” the group [wrote in a statement](#). “Regardless of their science, brand, or age, these tools are derived from data reflecting structural racism and institutional inequity that impact our court and law enforcement policies and practices. Use of that data then deepens the inequity.”

Monday, February 17, 2020

Police Explanation for Stop-And-Frisk Increase Doesn't Sit Well with Civil Liberties Groups

NIGEL ROBERTS



NYPD, East Flatbush. Liena Zagare/Bklyner

What's behind the increase of NYPD stop-and-frisks in 2019? While law enforcement officials downplay the rise, alarm bells are going off among some civil liberties groups.

Cops used the controversial policing tactic 22% more last year compared to 2018, according to statistics NYPD **reported** on February 7. Three Brooklyn neighborhoods made the top 10 list in the city – East New York topped the list, which also includes East Flatbush and Bedford Stuyvesant.

This reported increase in stops comes against the backdrop of the **police commissioner blaming** arrestees released from jail under the new bail reform law for the uptick of crime in January.

The NYPD said the new data does not signal a return to the past. Police officials reported 13,459 stop-and-frisks last year, compared to 685,000 in 2011, according to an NYPD statement sent to Bklyner.

More Accurate Reporting?

Officials claim the reported 2019 rise is “unlikely to be a true increase in stops but rather more accurate and complete reporting,” the statement said, adding that the “department has enhanced its auditing and compliance metrics as well as developed training to address stops and proper reporting.”

Brooklyn Defender Services (BDS) isn’t buying that explanation. BDS, a public defender organization, told Bklyner that the NYPD likely underreports its routine stop and harassment of mainly Black and Hispanic men. The organization annually represents nearly 35,000 low-income clients.

“The NYPD has attempted to explain the apparent increase in stop-and-frisks as the result of better internal reporting,” Lisa Schreibersdorf, BDS’ executive director told us. “However, the NYPD, which controls enforcement, arrest numbers, and certain charging decisions, has historically used statistics generated by the department itself to promote its political agenda.”

She continued: “For example, the NYPD previously **claimed credit** for lower numbers of stop-and-frisk encounters, while now blaming an increase on corrected reporting methods. Most recently, the department has claimed **credit for reducing murder and rape** numbers in New York City while blaming bail reform for alleged increases in property crimes.”

For the **New York Civil Liberties Union** (NYCLU), it’s unclear exactly why the number of stops increased last year.

“But it highlights how the NYPD has not completely moved away from broken windows policing that gave rise to the astronomically high number of stops we were seeing 10 years ago,” NYCLU Legal Director Chris Dunn told Bklyner. “While the increase in the number of stops gives us cause for

concern, the larger issue is the number of stops that are likely not being reported by officers.”

Stop & Frisk History

Charges of racial and ethnic bias are at the root of the controversy over stop-and-frisk. The policing tactic disproportionately targets people of color. Data from 2019 revealed that Black or Hispanic people accounted for 88% of stops but together **represent about 53%** of the city’s population.

As Bklyner **reported in 2012**, at the height of the stop-and-frisk era, the police seldom found weapons in the “hot spot” neighborhoods where they conducted most stops.

That pattern apparently repeated in 2019. The 75th Police Precinct, located in the mostly Black and Hispanic neighborhood of East New York, conducted the most reported stops (495), yet the precinct’s arrest rate was half the city’s average, according to the **New York Post**.

A federal court, in August 2013, found that the city’s stop-and-frisk was problematic because it amounted to racial profiling and **violated the constitutional rights of minorities**. It was a rebuke to then-Mayor Michael Bloomberg who championed the policing tactic. Bloomberg, now running for U.S. president, claims he had **a change of heart** about the impact of stop-and-risk in communities of color.

Bail Reform

Civil liberties groups are raising questions about the reported increase in stop-and-frisk as controversy brews over New York’s new bail reform law, which took effect on January 1. It prohibits judges from imposing cash bail on defendants accused of a misdemeanor offense and nonviolent felonies.

It’s unclear if law enforcement will ramp up stop-and-frisk in response to an uptick of crime in January. New York City Police Commissioner Dermot Shea, who opposes the new law, said it’s no coincidence that serious crimes rose after bail reform went into effect, the **Wall Street Journal** reported.

Shea's comments alarm many civil liberties advocates.

“Just as the NYPD is currently waging a public disinformation campaign to smear bail reform, which grants equal pre-trial rights to the poor as to the wealthy, it is no surprise that they are once again ramping up aggressive engagement in stop-and-frisk,” Schreibersdorf said.

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House of Representatives to Hold Hearing on Bill to Rescind Bail Rules

FEBRUARY 18, 2020 BY KRMS NEWSROOM



The House of Representatives in Jefferson City will be hearing a bill to overturn the new bail rules that were put in place by the Supreme Court last July. House Bill 1937 was introduced by Representative Justin Hill of Lake St. Louis. The rules severely limit the ability of judges to impose monetary conditions for release of the accused prior to their trial. It has led to an increase in failure to appear rates as well as a number of defendants re-offending, often within just a matter of days after their release.

Tuesday, February 18, 2020



Overturning new bail rules in Missouri

Jeffrey Clayton, Executive Director of the American Bail Coalition

**THE MARC COX MORNING SHOW**
FEBRUARY 18, 2020 - 6:52 AM



CATEGORIES: Blogs, General news, Government and politics, Local News

An administrative decision by the Missouri Supreme Court has moved us into the direction of the chaos that has ensued in New York after they essentially banned cash bail.

[NYC subway thief thanks Democrats after his 139th arrest, release: 'Bail reform, it's lit!'](#)

Rep. Justin Hill has introduced a bill that would overturn similar bail rules that the Missouri Supreme Court unilaterally adopted.

A hearing is set to take place today in the Missouri House.

Jeffrey Clayton, Executive Director of the [American Bail Coalition](#), will be in Jefferson City supporting the legislation.

Clayton joins the show to explain how important it is to support [House Bill 1937](#).



The National Bail Industry Is Funding Misleading Facebook Ads To Fight Bail Reform Movement, Advocates Say

BY GEORGE JOSEPH
FEB. 19, 2020 4:02 P.M.



A sign advertising a bail bonds business is displayed near Brooklyn's jail and courthouse complex in New York. KATHY WILLENS/AP/SHUTTERSTOCK

The national bail industry is bankrolling a Facebook campaign against New York state's new bail reform law. From December through this month, the American Bail Coalition, which represents bail bonds insurers, has spent around \$8,000 on promotional posts that have generated between 965,000 and 1.1 million impressions in New York state alone. The industry group has also spent thousands more on Facebook ads across the country, a small fraction of which have generated impressions in New York.

While many of the New York-focused ads note that they are paid for by a man named “Christoph Blaylock,” most do not disclose their ties to the bail industry, which has already begun to suffer financial losses since the law went into effect in January.

Progressive advocates of the bail reform law argue the ads contain misleading and, in some cases, outright false information.

One ad from a page called “Safer Communities” generated at least 90,000 impressions in New York through the second half of January. The ad urges members of the public to mobilize against the “dangerous new” law and provides a link to contact lawmakers. The post has 481 shares and 246 comments, which feature dozens of New York residents complaining about the law.

The screenshot shows a Facebook advertisement from the group "Safer Communities". The ad is sponsored and paid for by Christoph Blaylock, with ID: 1037190413314503. The text of the ad reads: "STOP New York Bail Reform - Take Action in the Link! New York State's dangerous new 'bail reform' law will eliminate bail for people charged with dozens of serious crimes, such as criminally negligent homicide, certain hate crimes, stalking and strangulation, and aggravated assault on a child. These new laws will put law enforcement, victims of crime, and small businesses ...". Below the text are two images. The left image shows a night street scene with a "NOW OPEN" sign. The right image shows a street scene with a "POLICE LINE - DO NOT CROSS" sign. Below the images are two captions: "STOP New York Bail Reform – Keep Our Communities Safe! – Safer..." and "STOP New York Bail Reform – Our Communities Safe! – Safe".

Safer Communities
Sponsored • Paid for by Christoph Blaylock
ID: 1037190413314503

STOP New York Bail Reform - Take Action in the Link!

New York State's dangerous new "bail reform" law will eliminate bail for people charged with dozens of serious crimes, such as criminally negligent homicide, certain hate crimes, stalking and strangulation, and aggravated assault on a child.

These new laws will put law enforcement, victims of crime, and small businesses ...

STOP New York Bail Reform – Keep Our Communities Safe! – Safer...

STOP New York Bail Reform – Our Communities Safe! – Safe

A screenshot of a Facebook ad ostensibly from the group “Safer Communities” opposing bail reform. FACEBOOK

But neither the ad nor the Safer Communities' Facebook page mention the American Bail Coalition. Its "about" tab describes itself as a "volunteer based online platform," using the "power of voices" to advocate for "accountability" in the criminal justice system.

"What's absolutely clear is that an industry, whose livelihood depends on continuing the bail system as it was before January 1st, is fighting hard and dirty," said Donna Lieberman, executive director of the New York Civil Liberties Union, who called the ads "misleading." "The bottom line is that fear mongering is what the bail industry is using in order to roll back bail reform," she continued.

Jeff Clayton, executive director of the American Bail Coalition, confirmed that the ads came from his organization, but insisted they were not meant to be deceptive. "Our intent certainly was to make it clear that it was us, and it's probably something I'll revisit when I get off this call," he said.

Advocates also criticized the industry group's posts for sharing what they considered to be false information. Another January advertisement, from a page called "New York Bail Reform - The Reckless 'Movement' Threatening Public Safety" claims that the new reform law eliminates strangulation from bail eligibility. Marie Ndiaye, Supervising Attorney of the Legal Aid Society's Decarceration Project, said this was false, noting that judges can, in fact, choose to set bail for felony strangulation cases.

"I think they are trying to scare people. They can't win this argument on the merits," she said, "So they are trying to win on politics by doing the tough-on-crime trope that comes around every election year."

Asked about the strangulation claim, Clayton said that his organization had borrowed language from a list put out by the New York state's prosecutors' association. Gothamist/WNYC found one such list online, which does reference many of the crimes referenced in the coalition's posts, but does not mention strangulation.

Clayton argues the bail insurers' ads are building off an organic backlash to the bail reform law, which he asserts is taking away judges' discretion counter-productively.

"We didn't really have much of an impact at all really in the explosion of what's happened," he said. "People can claim we're fear-mongering, but all we're doing is passing along what the media is already doing, for the most part."

Ndiaye acknowledged that the group's spending on ads has been relatively small, but said it is one piece of a larger misinformation effort. "This is a drop in the bucket but it is part of a coordinated effort by law enforcement and DAs and the bail bond industry and even the media in some cases to undo these reforms based on politics and not policy," she said.

For the bail industry, the power of the New York social media ads may be in helping stir up a debate that bleeds into other states, Clayton noted.

"Candidly, we're under the assumption that New York is lost, right?" he said. "So we look at the impact of this, in other states it's useful. As other legislators are looking at this, they're thinking to themselves we don't want a mess like that."

Bail industry forces have also been pouring money into lobbying in Albany. According to the state lobbying data, the Bail Bondsman Association of New York State spent \$75,000 between January and July of last year lobbying a variety of state lawmakers on "bail bonds reform," "criminal justice reform," and a number of state bills. State filings list Mercury Public Affairs LLC as the association's lobbyist and name a number of beneficial clients, including the American Bail Coalition.

State lobbying data from the second half of last year and the first months of this year is not yet available, but both Clayton and Michelle Esquenazi, a representative for the Bail Bondsman Association of New York State, indicated that the industry's lobbying efforts are continuing.

"We always lobby on behalf of our great industry every single day, seven days a week," said Esquenazi. She added, "Capitalism prevails in the United States of America and our organization is not unlike any other great mom-and-pop shop set of entities that are successful throughout the nation."

Last week, state Senate Democrats announced they are considering partial changes to the bail reform law. Democratic leaders have faced considerable pressure from law enforcement activists, and some may fear losing swing seats in November.



House bill would repeal Supreme Court bail rules

JORDAN MEIER

February 18, 2020

JEFFERSON CITY — The Missouri Supreme Court went too far. That's what Rep. Justin Hill, R-Lake St. Louis, said Tuesday about rules the state high court created to avoid jailing people simply because they're poor.

Hill sponsors [HB 1937](#), which would repeal rules that the state's high court created last year to regulate pretrial releases and bail. He said the court overstepped its authority.

"I've thought we needed to have this discussion," Hill told the House Judiciary Committee. "However, we did not get an opportunity to have this discussion because it was effectively legislated by the Supreme Court through their rule-making process."

The goal of the state high court's rules was to change the pretrial release system so that it did not punish low-income people by making them sit in jail because they could not afford bail.

Hill agreed that people should not be stuck in jail simply because they cannot afford bail, but he contended that the new rules have had a major consequence: an increase in crime.

"We essentially now just have a catch and release system," Hill said.

Several sheriffs from across the state testified about the effect the new rules have had on their jurisdictions, and some supplied anecdotes about increases in warrants for people not showing up for their court dates.

Sheriff Scott Lewis of St. Charles County said there has been a 30% increase in crime in his county since the rules were enacted, and that with these changes and the increase in warrants, officers have to locate and apprehend the missing defendants.

“There is no incentive to show up for court, so we are spending our manpower and our transportation costs driving around the state, driving around the United States, bringing these people back to St. Charles County,” Lewis said.

The sheriffs said the changes have impacted public safety. For example, Sheriff Shawn Webster of Clark County said he arrested a man on a Monday for burglary. The man was released and arrested for burglary again later that week, Webster said.

However, those in opposition to the bill said the court’s rules don’t force judges to release defendants with no bail, nor do the rules prohibit bail from being set.

“All the court has to do if they feel that cash bail is warranted under the circumstances is list why that is,” said Rep. Gina Mitten, D-St. Louis. “It doesn’t say you can’t do it. All that it says is that if you’re going to do it, you need to let us know why.”

Hill’s bill follows a letter he sent to the Supreme Court in January condemning the new rules and the way the court went about creating them. More than 80 lawmakers co-signed the letter.



Various county sheriffs, public discuss controversial bail rules at Capitol

by Gladys Bautista
Tuesday, February 18th 2020



A court ruling that raised eyebrows on both sides of the aisle at the state Capitol filled a house hearing room Tuesday. The room was full of people ready to discuss new legislation that would rescind the Missouri Supreme Court's July decision on jail bonding. (Gladys Bautista/KRCG 13)

JEFFERSON CITY — A court ruling that raised eyebrows on both sides of the aisle at the state Capitol filled a house hearing room Tuesday. The room was full of people

ready to discuss new legislation that would rescind the Missouri Supreme Court's July decision on jail bonding.

A number of people, including various county sheriffs, spoke in support of the bill that says a rule imposed by the state supreme court, has led to the pre-trial release of many felony suspects creating extra risk and extra work for sheriff's deputies statewide.

Sheriff Mike Bonham joined several Missouri sheriffs in attendance at the hearing, sitting alongside House Bill 1937 sponsor Representative Justin Hill. Bonham shared his support for the bill and said he believes it would prevent instances where officers are arresting the same person days, if not hours, later for the same offense.

"We've arrested one in the morning and arrested him later on in the afternoon... same offense," Bonham said. "So we're seeing that If he would've had a bond, he would've stayed in jail."

The sheriffs said the problem was the [Missouri Supreme Court's decision that allows suspects in non-violent crimes to be let out of jail without having to post bond.](#)

In these instances, Laclede County Sheriff David Millsap said the extra work it takes to re-arrest offenders takes a toll on the department.

"We answer 23,000 calls for service in Laclede County," Millsap said. "I don't have the operational manpower to go down chasing people down that should've probably stayed in jail or at least had a bond in which a bail bondsman would've gone and picked them up."

Supporters of the state supreme court decision spoke to the board saying the rules are fair and cut jail expenses. The same supporters of the decision, now turned critics of House Bill 1937, said those not convicted of a crime shouldn't be treated like they are.

"We feel as though this bill swings the state back into the wrong direction when it comes to pre-trial detention and criminal justice reform," Monica Del Villar said.

Del Villar spoke as a legislative associate of the ACLU.

Representative Hill, himself a former law enforcement officer, said despite all of the support, one key element was missing from Tuesday's hearing.

"I really think that what was missing over this whole issue was public comment," Hill said.

The committee took no vote on the legislation following the hearing.



Hearing held that would start process to overturn Missouri bail rules

by Matt Gunn | Wednesday, February 19th 2020



On Tuesday, February 19, a hearing was heard by the Missouri House Judiciary Committee for House Bill 1937 that will overturn the bail rules that were adopted in July. (MGN Online)

JEFFERSON CITY, Mo. — On February 19, 2020, the Missouri House Judiciary Committee held a hearing regarding [House Bill 1937](#). Its purpose is to overturn the bail rules that were adopted by the Missouri Supreme Court in July 2019.

The new bail rules that were implemented in July were intended to prevent nonviolent offenders from being stuck in jail simply because they cannot afford bail.

The American Bail Coalition and other critics have noted an unwelcome effect of the legislation. They say that these rules severely limit the ability of judges to impose monetary conditions for pretrial release and have all but eliminated the use of bail as an option.

The coalition and other critics have pointed to a significant increase in violent crime, including several high-profile incidents involving defendants released by criminal courts without having to post bail.

Jeffrey Clayton, executive director of the American Bail Coalition, provided the following takeaways to KTVO after Tuesday's hearing was adjourned.

Six elected sheriffs testified in favor of House Bill 1937, pointing out a variety of problems with the bail rules adopted by the Missouri Supreme Court last year:

1. Dramatic increases in failures to appear in court as a result of suspects being released on their own recognizance
2. Failing to impose bonds in significant cases, such as arson or dealing drugs across the street from an elementary school
3. No one, without bail bonding agents, is returning defendants to court when they fail to appear, further stressing law enforcement resources

Clayton added that several lawmakers on the committee argued that the Supreme Court rules do not, in fact, restrict judicial discretion.

The chair of the committee pointed out that there is some disconnect in terms of what the rules appear to say and how the rules are being applied in local jurisdictions.

A vote on this legislation will occur sometime in the next few weeks.



LOCAL NEWS

Pre-Trial Release Bill Receives Support of Law Enforcement

FEB 19, 2020 @ 10:40AM



The House heard arguments yesterday regarding new legislation that would rescind the Missouri Supreme Court's decision on jail bonding.

Concerns were raised by many that testified in support of the bill, saying that the pre-trial release of felony suspects has created extra risk and extra work for law enforcement.

In July, the Missouri Supreme Court issued a ruling which allowed suspects in non-violent crimes to be released without having to post bond.

Supporters of the Court's ruling say the rules are fair and cut jail expenses.

Bill sponsor Representative Justin Hill (R-Lake St. Louis) expressed a concern about the lack of public comment on the issue. The committee did not take action following the hearing.

Are Pretrial Risk Assessments Biased? The Debate Sharpens

By **Ted Gest** | February 18, 2020



Photo by Clyde Robinson via Flickr

Advocates of reducing jail populations have persuaded many courts around the U.S. to use tools known as pretrial risk assessments to help judges decide which defendants to release pending the disposition of their cases.

Critics contend that these tools are biased against minorities because they are based partly on suspects' criminal records in a justice system that has long been accused of practicing racial discrimination.

The latest major critic of risk assessment tools is the [Pretrial Justice Institute](#), a Baltimore-based national reform group.

The institute, which previously supported some use of the tools, on Feb. 7 [issued a statement](#) declaring it had now decided that, "Regardless of their science, brand, or age, these tools are derived from data reflecting structural racism and institutional inequity that impact our court and law enforcement policies and practices.

"Use of that data then deepens the inequity."

The American Bail Coalition, representing the bail bond industry, [said](#), "what took PJI so long to jump on the pretrial risk assessment apology tour is anyone's guess."

On Tuesday, criminal justice consultants **James Austin** and **Wendy Naro-Ware** of the Colorado-based [JFA Institute](#) published a [rebuttal](#) to the Pretrial Justice Institute.

Research on pretrial risk assessment tools (PRAs) shows, Austin and Naro-Ware contend, that "when applied properly, PRAs do not exacerbate racial and ethnic disparities within pretrial release decisions. "Rather, there is considerable evidence that PRAs ... are superior to subjective/clinical decision-making which tend to over-estimate the risk of pretrial defendants and thus falsely justify their detention."

The new back-and-forth between the two institutes is sure to intensify the debate in courts nationwide over whether and how assessment tools should be used.

As many jurisdictions consider eliminating cash bail systems that have been blamed for keeping too many needy



James Austin

suspects behind bars unnecessarily, many reformers have touted risk assessment tools as alternatives that can aid judges in deciding which defendants are most likely to appear for future court dates if they are released.

Austin and Naro-Ware argue that places using risk assessment tools should keep doing it because “the processes for their use have been researched, validated and tested for racial and gender biases. While they are not perfect, there is no scientific basis to stop using them.”

Pretrial risk assessment tools have been used since at least the 1960s, when the Vera Institute of Justice tested them in New York City.

More recently, they have been promoted by the Safety and Justice Challenge reform effort, funded by the MacArthur Foundation, in some 25 pilot projects around the nation. (MacArthur says it “has a neutral position on the use of these tools and leaves it up to Safety and Justice Challenge sites to determine what reform strategies are best for their unique jurisdictions, including whether to implement a risk assessment tool.”)

The most frequently used version is the [“Pretrial Safety Assessment” tool](#) launched nationwide in 2018 by the Laura and Jay Arnold Foundation, now Arnold Ventures, and used at 18 sites, Austin and Naro-Ware say.

The two consultants agree that there are racial, gender and other biases in the deployment of police, arrest, charging, detention, and sentencing practices. But that does not mean all arrests, convictions and sentences are biased, they say.

Ending the use of risk assessment tools, declare Austin and Naro-Ware, “would be akin to disallowing the use of any prior conviction data for any court decision. In essence, a multiple domestic violent, DUI, or drug distribution offender would be treated the same as a first-time defendant.”

Instead of eliminating risk assessment tools, they say, those who design them must “endeavor to ensure that any form of implicit bias is reduced to its lowest level.” Their paper suggests various ways to achieve that result.

The consultants’ arguments don’t seem likely to persuade the Pretrial Justice Institute (PJI), which says its examination of jurisdictions that have

used the tools showed that “some places saw significant increases in pretrial liberty, but many did not, and racial disparities persisted in both. We were wrong for having risk tools as part of our ‘smart’ pretrial justice framework.”

In PJI’s view, local criminal justice systems should pursue “other strategies for pretrial justice reform.”

That includes, it says, “expanded use of citations, adversarial detention hearings for a limited number of serious charges, and addressing people’s needs (as opposed to risk) through community-based support.”

Ted Gest is president of Criminal Justice Journalists and Washington Bureau Chief of The Crime Report.



Missouri lawmakers look to overturn state Supreme Court's bail rules



By [Andrew Havranek](#) | Posted: Wed 6:44 PM, Feb 19, 2020

JEFFERSON CITY, Mo. -- Laclede County Sheriff David Millsap's deputies have been busy serving more than 1,100 warrants in the last eight months.

"690 people have failed to appear on their warrants after they've been issued," Millsap told the Missouri House Judiciary Committee Tuesday night.

That means his deputies are spending more time trying to track people down. It's something his officers didn't have to do before.



"I don't have the operation manpower to go out chasing people down that should have probably stayed in jail," Millsap added.

He's not the only sheriff who's having a hard time keeping people who should be in jail, from easily being back on the streets.

"We've arrested one in the morning, and arrested him later on in the afternoon. Same offense," said Osage County Sheriff Mike Bonham.

Sheriffs say it's all because judges must now consider bond options that don't involve money first.

Missouri's Supreme Court ruled in 2019 many people can't afford bail for low level offenses, and could lose their jobs waiting for trial.

Bail bondsmen like Janet Garms feel they're making the situation a little better.

"We help people in that we care," Garms told the committee.

One of Garms' clients, Molly Lake, was in and out of jail for relatively minor crimes. She says Garms helped her get her life back on track.

"I'd probably still be in and out of county jail," Lake told the committee.

More than 80 Missouri lawmakers are pushing to repeal the Supreme Court's ruling.

Republican Representative Justin Hill of Kirkwood filed the bill.

"I'm for criminal reform," Hill said. "However, we've gone too far, or the court has gone too far. I want to repeal these rules, and have this discussion."

Others, including St. Louis County Democrat Gina Mitten, don't want to see the new rules go anywhere. Her county's courts developed a form that allows a judge to explain their bail decision.

"It doesn't say you can't do it. It doesn't say you can't do it anywhere," Mitten said of the ruling. "All it says is if you're going to do it, you need to let us know why."

The House Judiciary committee has not voted on the bill, but it is expected to make it to the House floor for debate.

WIRED

TOM SIMONITE | BUSINESS | 0 2.19.2020 | 08:00 AM

Algorithms Were Supposed to Fix the Bail System. They Haven't

A nonprofit group encouraged states to use mathematical formulas to try to eliminate racial inequities. Now it says the tools have no place in criminal justice.



PHOTOGRAPH: GUY CALI/GETTY IMAGES

If you are booked into jail in New Jersey, a judge will decide whether to hold you until trial or set you free. One factor the judge must weigh: the result from an algorithm called PSA that estimates how likely you are to skip court or commit another crime.

New Jersey adopted algorithmic risk assessment in 2014 at the urging, in part, of the nonprofit Pretrial Justice Institute. The influential Baltimore organization has for years advocated use of algorithms in place of cash bail, helping them spread to most states in the nation.

Then, earlier this month, PJI suddenly reversed itself. In a statement posted online, the group said risk-assessment tools like those it previously promoted have no place in pretrial justice because they perpetuate racial inequities.

“We saw in jurisdictions that use the tools and saw jail populations decrease that they were not able to see disparities decrease, and in some cases they saw disparities increase,” says Tenille Patterson, an executive partner at PJI.

Asked to name a state where risk-assessment tools didn’t work out, she pointed to New Jersey. State figures released last year show jail populations fell nearly by half after the changes, which took effect in 2017, eliminating cash bail and introducing the PSA algorithm. But the demographics of defendants stuck in jail stayed largely the same: about 50 percent black and 30 percent white.

Pete McAleer, a spokesperson for New Jersey’s Administrative Office of the Courts, said PSA alone could not be expected to eliminate centuries-old inequities and that the state’s reforms had prevented many black and Hispanic defendants from being detained. State officials are seeking ways to eliminate remaining disparities in its justice system, he said.

PJI’s switch from advocate to opponent of risk-assessment algorithms reflects growing concerns about the role of algorithms in criminal justice and other arenas.

In an open letter last July, 27 prominent academics suggested pretrial risk assessments be abandoned. The researchers said the tools are often built on data that reflects racial and ethnic disparities in policing, charging, and judicial decisions. “These problems cannot be resolved with technical fixes,” it said.

Last month, concerns about racial bias prompted Ohio’s Supreme Court to delete from a list of proposed bail reforms a recommendation that the state adopt risk-assessment tools. The court’s recommendations will become law automatically this summer unless both chambers of the state legislature block them. In December, a Massachusetts commission rejected risk-assessment tools in that state’s report on bail reform, and cited potential racial bias. California voters will decide in November whether to repeal a new state law that would eliminate cash bail and require use of risk assessments.

Beyond bail systems, critics have cautioned about blindly trusting algorithms in areas as diverse as facial recognition, where many algorithms have higher error rates for darker skin; health care, where researchers found evidence a widely used care-management system pushed black patients to the back of the line; and online recommendations, accused of amplifying conspiracy theories and hate speech.

Risk-assessment algorithms like PSA have spread across the US as part of efforts to scrap or minimize use of cash bail to decide who gets to go home while awaiting a court date. Criminal justice reformers view bail as unfair to

people from poorer, minority communities, who often are jailed for only minor charges. Instead of a single judge making such decisions alone, potentially introducing personal biases, combining human judgement with mathematical formulas based on statistics from past cases was thought to be fairer.

A recent report from the Philadelphia nonprofit the Media Mobilizing Project and the Oakland nonprofit MediaJustice found that such tools are used in at least parts of 46 states and the District of Columbia.

PSA is among the most widely used algorithms. It was developed by the Arnold Foundation, a philanthropic organization now called Arnold Ventures that has given grants to PJI totaling more than \$500,000 since 2017.

“Many states and jurisdictions have adopted these tools, and PJI and the Arnold Foundation have been promoting it,” says Ben Winters, a researcher on data and algorithms in criminal justice at the Electronic Privacy Information Center. “Now there’s a turn towards skepticism and pulling back.”

Last week, Advancing Pretrial Policy and Research, which is funded by Arnold Ventures and distributes PSA, posted a response to PJI’s change of position, saying tools like PSA cannot alone fix pretrial justice. In a statement to WIRED, APPR’s codirectors, Madeline Carter and Alison Shames, said PSA is “one strategy in a comprehensive approach to achieving fair, just, and effective pretrial justice.”

Most risk-assessment tools are relatively simple and produce scores based on a handful of data about a person and their case. PSA uses nine factors, including a person’s age, prior convictions, and pending charges.

Evidence of how such tools perform in practice is relatively scarce, but recent studies show the results can be surprising and uneven. A study of Virginia, which adopted risk assessment in 2002, found that judges overruled an algorithmic risk-assessment’s recommendations most of the time, and that racial disparities increased among circuits that used risk assessment the most. A study of Kentucky, another early adopter, found that after risk-assessment tools were introduced, white defendants were offered no-bail release much more often than blacks.

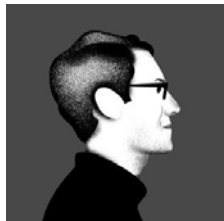
Concern has also grown about the bias baked into the statistics underlying risk scoring algorithms stemming from the realities of American policing and justice. It broke into the mainstream in 2016 when a ProPublica investigation described how an algorithm called COMPAS used in Broward County, Florida, overestimated the risk of recidivism by black defendants.

Patterson of PJI says the group changed its view of algorithms in pretrial justice in part because since 2018 it has placed more emphasis on racial

justice and has begun listening more to grassroots organizations. “We heard people in these communities saying these are tools of harm,” Patterson says.

Divorcing bail reform from risk-assessment algorithms may not be easy. Julian Adler, director of policy and research at the Center for Court Innovation, a nonprofit that has worked with New York State and Arnold Ventures, says the two have been closely entwined—in part thanks to the work of PJI. “It raises a lot of questions about what’s to come,” he says.

PJI says it has already begun talking with officials in places that took its previous advice about how they might follow the nonprofit in turning their back on risk-assessment algorithms. Alternatives include laying out simple, clear rules that send most defendants home and guide judges on what can justify holding someone in jail. PJI expects to publish updated, algorithm-free guidance on pretrial reform next month—likely adding momentum to the turn against risk-assessment algorithms.



Tom Simonite is a senior writer for WIRED in San Francisco covering artificial intelligence and its effects on the world. He was previously the San Francisco bureau chief at MIT Technology Review, and wrote and edited technology coverage at New Scientist magazine in London. Simonite received a bachelor’s degree from... [Read more](#)

SENIOR WRITER

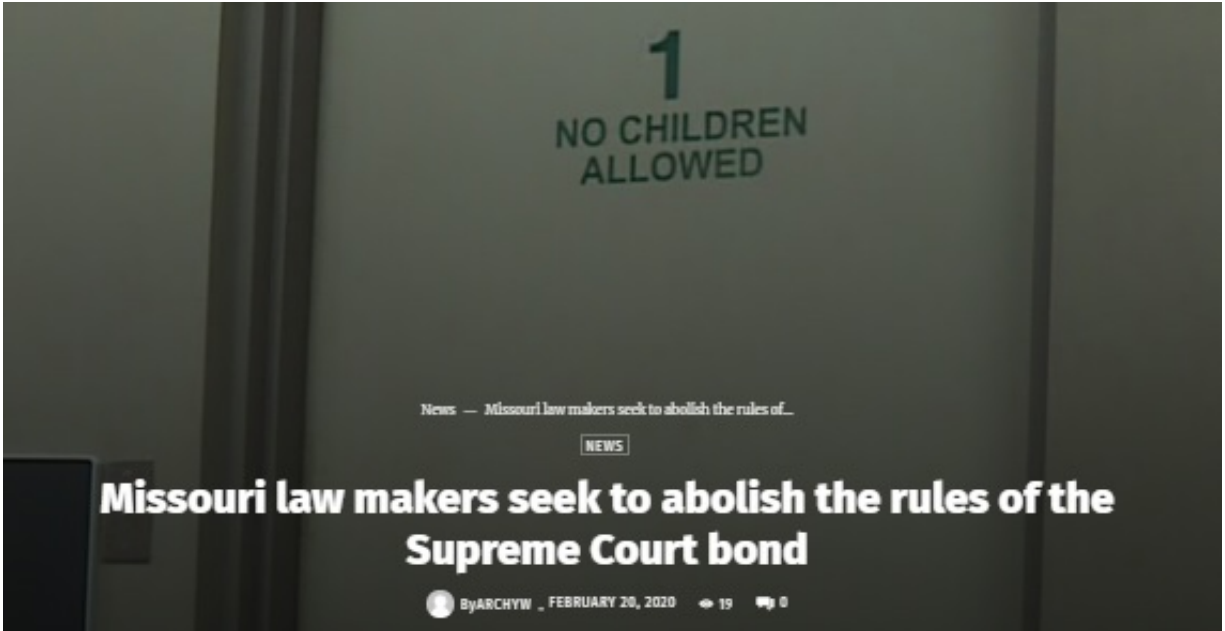


MO HOUSE HEARING ON BILL TO RESCIND NEW BAIL RULES

The Missouri House of Representatives will be hearing a bill today (Tuesday) that would rescind the controversial new bail rules that were implemented by the State Supreme Court last July.

The new rules were intended to prevent nonviolent offenders from being stuck in jail merely because they cannot afford bail.

Since the new rules took effect several local sheriffs have expressed their displeasure with the new law.



JEFFERSON CITY, Mo. Laclede Couty Sheriff David Millsap delegates have been busy serving over 1,100 warrants in the last eight months.

“690 people failed to reach their warrant after they had been issued,” Millsap said to the Missouri House Judges Committee on Tuesday night.

This means that his delegates are spending more time trying to track people. What his officials did not do before.

“The manpower of the operation I have to pursue people down does not have to remain in prison,” Millsap said.

It is not the only sheriff who has a difficult time to keep people in prison, not being back easily on the streets.

“We have been arrested in the morning, and arrested later in the evening. Similarly,” Sheriff Osage, Mike Bonham said.

Sheriff says it is all because judges must first consider non-cash bond options.

The Missouri Supreme Court ruled in 2019 that many people cannot pay money for low level offenses, and could lose their jobs pending trial.

Bond bands like Janet Garms feel that they are doing the situation a little better.

“We help people who we care for,” Garms said to the committee.

One of Garms’ clients, Molly Lake, was in prison for relatively minor crimes. She says that Garms helped her to restore her life on the right track.

“I suppose I would be in prison and out of county,” Lake said to the committee.

More than 80 Missouri legislators are pushing the ruling of the Supreme Court to be repealed.

The Republican Representative Justin Hill of Kirkwood put the bill together.

“I’m for a criminal reform,” said Hill. “However, we are too long, or the court has gone too far. I want to repeal these rules, and do this discussion.”

Others, including St. Louis County Democrat Gina Mitten, they don’t want to see the new rules anywhere. Courts have developed their county which allows a judge to explain their decision to bail.

“He doesn’t say you can’t do it. He doesn’t say you can’t do it anywhere,” Mitten said about the control. “The thing he says is if you have to do it, you have to tell us why.”

The House of Justice committee did not vote on the bill, but it is hoped that it will send it to the floor of the House for debate.

Bail rules need legislative action

Feb 18, 2020



File photo | News-Press NOW

Lawmakers aren't shy about taking issue with judicial overreach. They do it so much that it's hard to take these complaints seriously.

In the case of new rules that limit a judge's ability to impose bail, the Missouri legislature is on solid ground. This is not a case of lawmakers crying wolf or trying to score tough-on-crime political points.

The rules in question took effect last summer, part of a Missouri Supreme Court effort to ensure that race or income status do not play an outsized role in determining whether

someone sits in jail, awaiting trial. Though judges can set bail if needed, they are required to first consider nonmonetary conditions for pretrial release.

“Too many who are arrested cannot afford bail even for low-level sentences and remain in jail awaiting a hearing,” Missouri Supreme Court Judge Zel Fischer said in an address to the legislature this year. “Though presumed innocent, they lose their jobs, cannot support their families and are more likely to re-offend.”

This is laudable sentiment, but the judge did not win over his audience. More than 80 lawmakers, including some from our area, signed a letter that calls on the court to rescind the new rules.

These lawmakers understand that this was not a technical tweak or a court’s interpretation of a law that passed the legislative process. It’s a significant change, imposed by the judicial branch, that disregards the interests of crime victims and communities.

A deadly shooting last fall laid bare some of the flaws. The alleged gunman who killed four people in a Kansas City-area bar last fall had been released from jail despite a record that included resisting arrest and fleeing police.

In Jefferson City, a hearing was scheduled for Tuesday afternoon on a House bill that would overturn the bail rules and require some kind of bond or other deposit if there’s a determination that the offender is unlikely to appear in court.

This proposal, from state Rep. Justin Hill, makes two reasonable assumptions about bail requirements. One is that the overriding factor should be a defendant’s likelihood to commit more crimes and follow the conditions imposed by a judge, regardless of socioeconomic factors. The other is that bail does more than punish poor defendants indiscriminately; it protects the neighborhoods — including low-income ones — that are at risk if someone who’s unlikely to appear in court is released on personal recognizance.

If lawmakers feel that the new bail rules don’t protect Missourians, then they have the right to take action. What’s more, they have an obligation to do something.



THE WALL STREET JOURNAL.

Criminal-Justice Reforms Are Squeezing the Bail-Bond Industry

Endeavour Capital is the latest financial firm to exit business as laws shift, activists pressure investors

02/21/2020 | 10:51am EST

By Laura Kusisto

The bail-bond industry is under intense pressure as more states virtually wipe out cash bail and financial firms look for an exit from an increasingly controversial profit center in the criminal-justice system.

Most recently, private-equity firm Endeavour Capital says it has sold its stake in California-based Aladdin Bail Bonds, one of the country's largest bail bond providers. The move came after Endeavour and its investors faced pressure from the American Civil Liberties Union and others who say bail is part of a justice system that discriminates against minorities and low-income defendants.

Endeavour follows other major financial firms that have abandoned the bail bond industry, amid falling revenues, growing criticism from activists and an uncertain political environment. Tokio Marine HHC, a Houston-based insurance company owned by Japan's Tokio Marine Holdings Inc., said in April it was selling Bail USA Inc., a bail-bond underwriter, and no longer providing insurance for bail bond companies. Randall & Quilter Investment Holdings Ltd., an insurance company based in Bermuda, said in a December 2018 financial report that it was divesting itself of its U.S. bail bond business.

Endeavour didn't respond to questions about why it sold Aladdin, and hasn't disclosed the buyer in the recent sale.

Aladdin and Randall & Quilter didn't respond to requests for comment.

The decisions to exit bail-bond companies come as the industry enters a period of decline. The amount of bail bonds written has fallen about 10% to just over \$14 million in 2018, according to an analysis of industry data by insurance-ratings firm A.M. Best Co. From 2009 through 2016 the industry grew by about 25%, but more recently it experienced two straight years of declines.

Bail-bond companies have long been essential to the U.S. criminal-justice system, helping defendants who can't afford bail get out of jail by posting the cash for their release and ensuring they show up in court. In exchange, they charge a fee of about 10% of the amount of bail and can seize collateral if a defendant misses court.

The most serious pressure on the bail-bond industry has been a host of changes to local laws governing how judges release inmates pretrial, as state politicians question the value of bail. More than 20 states and numerous counties have largely eliminated cash bail for low level and nonviolent offenders in recent years.

"If criminal-justice reform were to take effect in enough states, they could be in serious trouble," said David Blades, a senior industry analyst at A.M. Best, of bail-bond companies. He added that he doesn't believe the industry is yet under existential threat.

Industry experts said the bail industry's gradual decline could become a free fall if a law passed in 2018 goes into effect in California. The state is by far the industry's largest market, accounting for one-quarter of the bail-bond industry's revenue, according to the American Bail Coalition, a trade association for bail insurance companies.

The California measure would replace cash bail with an algorithm that would help determine whether those accused of a crime were safe to be released. Implementation has been suspended until a referendum is held in November.

"Everybody is collectively holding their breath to see what happens in California," said Jeff Clayton, the American Bail Coalition's executive director.

Even without specific regulatory changes, Mr. Clayton said the industry is finding itself under pressure because judges are letting more low-risk offenders go free, leaving bail-bond companies to deal with higher-risk offenders who require more monitoring.

Activists have also targeted the bail-bond industry by pressuring insurers and financial firms that "provide the financial underpinning for the entire bail bond industry," said Udi Ofer, director of the justice division at the ACLU.

The ACLU and another progressive civil-rights advocacy group, Color of Change, embarked on a campaign that included sending letters to Endeavour and meeting with the private-equity firm to try to get it to sell its stake in Aladdin, which the fund described as the largest retail pretrial release service provider in the country, operating 50 locations and employing 600 people.

When that failed, Mr. Ofer said, they targeted pension funds and university endowments that invested in Endeavour's most recent fund. Many of those groups were based in Endeavour's home state of Oregon, which doesn't allow commercial bail bonding.

"We believe the bail industry would benefit from certain reforms," John von Schlegell, managing director and co-founder of Endeavour, wrote last year in a letter to a consultant who worked on the ACLU's campaign. "We offered to discuss those and other reform ideas with you and you disregarded that offer, stating your overriding opposition to any private enterprise involved in the criminal justice system."

Mr. Ofer called Endeavour's decision to sell Aladdin "a major milestone in the movement to end the for-profit bail industry in the United States and end the practice of wealth-based incarceration."

An investor group led by Endeavour purchased a controlling stake in the holding companies affiliated with Aladdin in 2012, according to an annual financial statement from one of those companies, Seaview Insurance Co.

Multiple Endeavour investors declined to discuss the firm's decision to exit its Aladdin investment, saying that they didn't have input into how the private-equity firm invests their funds.

Ben Eisen contributed to this article.

Write to Laura Kusisto at laura.kusisto@wsj.com

Corrections & Amplifications

This article was corrected at 1:28 p.m. ET because the original version misstated that the amount of bail bonds written fell to about \$14 million instead of \$14 billion in the sixth paragraph.

TOP STORY

Lawmakers hold hearing on canceling bail rules

By Matt Hoffmann News-Press NOW | Feb 21, 2020



Missouri lawmakers are maneuvering to potentially cancel bail rules that have been in place for less than a year.

The rules were established by the Missouri Supreme Court, but not endorsed by the legislative or executive branch.

“One of the ranking Democrats was trying to take the position that the rules were fine and the judges could do, you know, everything else they thought they could do before,”

Jeff Clayton, the director of the American Bail Coalition, said. “And there were six uniformed elected sheriffs that came and said, ‘No, that just isn’t the case.’”



Rep. Justin Hill,
R-Lake St. Louis

Rep. Justin Hill, R-Lake St. Louis, filed legislation to end bail rules put into place less than a year ago.

The Missouri House Judiciary Committee hosted a hearing on Tuesday in which proponents and opponents of canceling the rules testified.

Buchanan County Sheriff Bill Puett was not one of the sheriffs who testified, but he told News-Press NOW that he’s noticed a change since the rules were put in place last July.

“A lot of offenders we’ve seen don’t show up to court on the court date,” Puett said. “So we’ve seen a huge increase in failure to appears, so they are not showing up for court.”

The rules require local judges to consider nonmonetary release conditions for defendants before considering financial ones.

Clayton has advocated for lawmakers to amend the law so that low dollar “nuisance” bonds are removed. He argues bonds set by judges should either be substantial enough to guarantee defendants’ appearances in court or defendants should be released on their own recognizance.

According to Clayton, a vote on the bill to cancel the rules is expected within a few weeks.

The measure does not require the governor’s signature. The Missouri Constitution allows the legislature to cancel Supreme Court rules with a majority vote in both houses.

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San Francisco Chronicle

US & World // News

New snag in effort to abolish cash bail: ‘risk assessment tools’ called racially biased



[Bob Egelko](#)

Feb. 24, 2020 Updated: Feb. 24, 2020 4:20 p.m.



Half a dozen bail bond offices are located across the street from the hall of justice on Bryant St. seen on Wednesday, Aug. 29, 2018 in San Francisco, Calif. California will become the first state to let people leave jail before trial, eliminating bail under a law signed by Gov. Jerry Brown yesterday. The law is scheduled to take effect in October 2019.

Photo: Liz Hafalia, The Chronicle

One reason California lawmakers [voted in 2018](#) to abolish cash bail for pretrial release — an issue state voters will consider in November — is that the pay-for-release system particularly harmed racial minorities. In its place, the new law would require local courts to use “risk assessment tools” to calculate whether a defendant is likely to flee or cause violence if freed before trial.

Now, one of the foremost advocates for changing the bail system, the nonprofit Pretrial Justice Institute, has concluded that the risk assessments themselves are racially biased, at least in their impact.

“These tools are derived from data reflecting structural racism and institutional inequity that impact our court and law enforcement policies and practices,” the institute said in [a report earlier this month](#), withdrawing its previous support for use of the assessments to determine conditions of pretrial release.

Leaders of the bail bond industry, which blocked the new law and kept the bail system in place by qualifying a referendum for the November ballot, say the reversal undermines the case for abolishing bail.

The Pretrial Justice Institute “had long touted risk assessment tools as far more fair than the accountability-based cash bail system,” the American Bail Coalition, an industry group, said in a statement.

Its executive director, Jeff Clayton, said the change of position by “respected advocates” makes it more likely that states and local governments will seek “reforms within the current legal framework, which allows for the parties to request and judges to impose a monetary bail.”

The Pretrial Justice Institute emphatically disagreed, saying it still opposes bail or any other financial requirements “that allow some people to buy their freedom while others remain in jail.”

But the loss of influential support for a principal alternative to bail leaves the future of pretrial release in California even more uncertain as the November vote approaches.

Opponents of mass incarceration in California have targeted post-arrest bail, in which defendants must post an amount based on the seriousness of the charges in order to be freed while awaiting trial.

Bail bond companies — whose main source of income is the 10% fee they charge for the bonds — and prosecutors who defend the system say it promotes public safety and encourages defendants to show up in court. But it also keeps many poor people locked up because they can’t afford to pay their way out.

According to one recent state study, more than 48,000 county jail inmates in California, two-thirds of the jail population, were pretrial inmates not yet convicted of any crime, and most were being held because they were unable to post bail.

Opponents of the bail system include Chief Justice Tani Cantil-Sakauye, who has called it “outdated, unsafe and unfair,” and supported SB10, the 2018 legislation signed by then-Gov. Jerry Brown. One other state, New Jersey, eliminated cash bail for nearly all crimes in January 2017, and reported a 19% decline in its jail population by 2019, with no significant increase in major crimes.

But some longtime opponents of cash bail dropped their support for SB10 after amendments were added that left release decisions largely up to individual judges, who would rely on computer-driven risk assessments. The late San Francisco Public Defender Jeff Adachi said before Brown signed the bill that SB10 “handed the key to the judges” and might actually keep more people behind bars. The American Civil Liberties Union also withdrew its support.

The fate of SB10 may depend on whether those onetime supporters decide that an unsatisfactory overhaul of the system is better than leaving cash bail intact.

“A lot of groups are still going through the (re-evaluation) process internally” and have not yet taken a position, said Jonathan Underland, a representative of the pro-SB10 effort, which calls itself the End Predatory and Unfair Money Bail Campaign.

The bill would not allow pretrial release of defendants charged with capital crimes, those with recent serious or violent felony convictions, those charged with domestic violence, or anyone who had repeatedly failed to appear in court while free on bail in the past.

Those accused of nonviolent misdemeanors, like small-scale shoplifting, would be freed within 12 hours, with some exceptions. For others, the judge would use computerized risk assessment tools to decide whether they posed a low, moderate or high risk of fleeing or committing another crime, and what degree of supervision they would receive if released.

The assessments, used in localities across the United States, consider the current charges and other factors, such as the defendant’s criminal record, work history, community ties, present and past housing, and drug use. Although SB10 is not in effect, courts in 49 of

California's 58 counties are using some version of risk assessments in guiding pretrial release, said the bill's lead author, state Sen. Bob Hertzberg, D-Van Nuys.

Another Hertzberg bill, SB36, which breezed through the Legislature without opposition last year, requires counties to examine their risk assessments at least once every three years, starting next January, to determine their accuracy and any adverse impact based on gender, race or ethnicity. That requirement will stay in effect even if voters reject SB10.

But the Pretrial Justice Institute says the assessment tools are unreliable and prone to bias.

For example, said Cherise Fanno Burdeen, the institute's executive partner, some judges issue arrest warrants for failing to show up for a hearing when a defendant is 10 minutes late, or is confined to a hospital, while other defendants miss hearings because they lack transportation or child care — costing all of them points in risk assessments.

Researchers in a number of states have also found that, in many communities that use the assessments, “even if their jail population goes down, racial disparity goes up,” Burdeen said. San Francisco, meanwhile, eliminated post-arrest cash bail in its courts on Thursday, under a legal settlement, after a federal judge ruled that the city's bail system discriminated unconstitutionally against the poor.

[Under the new system](#), those accused of misdemeanors or nonviolent felonies must be released within 18 hours unless police convince a judge they are too dangerous to be freed. Those charged with more serious crimes will remain in jail unless they convince the judge they can be released safely without bail.

Sadik Huseny, a lawyer for inmates in the San Francisco case, said he hopes the settlement will show that pretrial release can be conducted both fairly and safely, regardless of the imperfections in current risk assessments.

“We support any efforts to continue to improve risk assessment tools,” he said, “but these developments do not undercut the strong case against cash bail.”

Bob Egelko is a San Francisco Chronicle staff writer. Email: beigelko@sfchronicle.com
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FEATURED

Bill would reduce Utah justice system's reliance on monetary bail

By MARK SHENEFELT Standard-Examiner

Mar 5, 2020



Rep. Stephanie Pitcher, D-Salt Lake City, during debate Feb. 28, 2020, in the Utah House.

SALT LAKE CITY — An effort to limit the use of monetary bail for Utah criminal suspects is advancing in the Legislature as sponsors warn constitutional challenges to the existing system may be coming.

“If they can’t pay full bail or 10% to a bondman, they can stay incarcerated for weeks or months or longer until their case is resolved,” said Rep. Stephanie Pitcher, D-Salt Lake City. “It creates a two-tier wealth-based system where those with money get out and those who don’t stay in.”

Pitcher is sponsoring House Bill 206, which reworks the pretrial detention system to emphasize a presumption of release for low-risk detainees and says judges “should impose the least restrictive reasonably available conditions necessary to secure the safety of the public.”

The House passed the bill 54-15 on Friday and it's now before a Senate committee. The bill has support from prosecutors, sheriffs, defense attorneys and the judiciary, but opposition has formed from the bail bond industry and lawmakers who say the existing system is already too lenient.

In several states, defendants have successfully challenged the constitutionality of monetary bail systems on equal protection and due process grounds, Pitcher said.

The cornerstone of HB 205 is the creation of a pretrial services program that would help counties and local courts refine approaches to determining detention conditions.

Pretrial services use a range of conditions for release, Pitcher said, such as requiring a released defendant to periodically check in by phone or in person.

"Some agencies will drug test, and in some they will periodically run rap sheets" to see if a released person has offended again, she said. "On most in pretrial services, they keep an individual engaged with the current problem they have to resolve. They make sure they're not blowing things off."

Third District Court Judge Todd Shaughnessy, who chaired a Utah Judicial Council study that recommended some of the changes, said HB 206 gives judges more latitude in making detention decisions and solidifies the process by law.

Judges are required to weigh their decisions to secure the safety of witnesses and victims and make sure the defendant returns to court when required.

"There's an obvious tension between objectives," Shaughnessy testified in a Feb. 26 committee hearing. "If all we cared about was people showing up for court we would hold all of them in jail and transport them to court. And if we didn't care about public safety we would simply release everyone. Instead what we do is engage in an exercise of risk management."

One impetus for the bill is research that shows poor results for low-risk suspects kept in jail.

"We know that if we detain a low-risk individual in custody we make them worse," the judge said. "We increase the possibility that they're going to go out and commit crimes. In short, if we keep low-risk people in jail we increase crime and we create more victims."

That's because inmates held even for two days start losing social connections to the community, Shaughnessy said. They lose jobs and housing, and if they're deprived of mental health medications while in jail, a cascading effect may result.

On the other hand, he said, “if we release high-risk individuals we likewise run the risk of increasing crime and we fail in our responsibility to protect public safety.”

The bill does specify a presumption of detention for high-level crimes.

The bill also outlines steps where an inmate’s ability to make bail can be better evaluated.

“We hope we can filter some of these low-risk offenders out of the jails so the jails are maintained for our more high-risk offenders,” said Kim Cordova, director of the Utah Commission on Criminal and Juvenile Justice.

The American Bail Coalition, representing the bail bond industry, issued a statement opposing HB 206.

“The public and policymakers might want to be aware that this legislation is very likely to increase crime,” the statement said.

The group cited as evidence a University of Utah College of Law study released in February that said recent monetary bail reform in Illinois resulted in higher crime. The bail coalition also pointed to a widely criticized bail rewrite in New York.

But Pitcher told the House committee the New York law says that a risk of flight is the only reason bail for lower-level crimes can be set. In the Utah bill, risks to public safety, witnesses and victims must be considered as well, she said.

Rep. Karianne Lisonbee, a Davis County Republican, secured an amendment to Pitcher’s bill during House debate that mandates the state track the effects of the HB 206.

Lisonbee said she was concerned by reports of offenders with seven or more separate offenses being bailed out of jail again and again.

You can reach reporter Mark Shenefelt at mshenefelt@standard.net or 801 625-4224. Follow him on Twitter at @mshenefelt.

Wednesday, March 11, 2020

GUEST COMMENTARY

Missouri Supreme Court's bail rules have crippled judge's ability to do their jobs

BY JEFFREY J. CLAYTON
EXECUTIVE DIRECTOR
AMERICAN BAIL COALITION

Perhaps swept up in the current wave of enthusiasm nationwide for bail reform, Missouri's Supreme Court made the unfortunate move to unilaterally change the rules on bail through an edict issued last year.

It has been said that the road to hell is paved with good intentions, and it would appear that was certainly the case here.

Implemented last July without public input or feedback, the new rules were designed to limit the detention of defendants because of an inability to pay for their release. In the process, it made it nearly impossible for judges to impose bail at all and effectively took away their ability to apply discretion on an individual basis.

Practically, judges have been pushed to release more defendants on their own recognizance, both through the rules themselves and an apparent internal lobbying effort by the state judiciary.

House Bill 1937 was recently introduced by Rep. Justin Hill (R-Lake St. Louis) to reverse the high court's new bail rules. It was inspired by a letter signed by 82 fellow lawmakers and delivered to the Missouri Supreme Court in January, demanding that the new rules be rescinded.

In a hearing before the Missouri House Judiciary Committee, Hill testified that legislators were locked out of what was essentially a law-making process, while county sheriffs from across the state said they were handcuffed by the new court rules.

According to the sheriffs, the results of the new rules have been a mess. Failures to appear in St. Charles County have, for example, increased by 30 percent since the laws took effect. They added that defendants are no longer being held accountable since there are no bail agents

with arrest powers looking for them. Because of that, victims do not get their day in court.

The hearing also offered horror stories of defendants who were released on their own recognizance that simply did not pass the test for common sense. One sheriff recounted a deputy who arrested a prior felon who lived one block from an elementary school. The man was dealing methamphetamine and in possession of firearms — both federal crimes.

He fought with deputies and “destroyed the jail” by ripping out the exposed plumbing in the jail and demolishing a TV. Ultimately, this individual was released on his own recognizance under the new rules.

Despite evidence to the contrary, some have questioned whether the new rules are as bad as they seem. One member of the Judiciary Committee claimed that judges retained plenty of discretion, even as the sheriffs testified under oath that they were told by these same judges they had been instructed to release more defendants on their own recognizance.

Despite its zealotry to implement new bail rules, there is no evidence that the Missouri Supreme Court had any data upon which they could base their initiative.

In fact, while they did have a secret task force, there is no report, meeting minutes, committee roster, or any other information that might help the public understand what they were thinking when they decided to plunge ahead. What we do know, however, is that there were stories in a variety of news outlets in January 2019 that the court was planning to eliminate cash bail — something they now deny took place.

Perhaps most maddening of all is the brazenness of the Supreme Court, which contends that in the aftermath of their move, everything is fine.

The fact is the court succeeded in what it originally set out to do: release more people from jail, including repeat criminal defendants.

There were no other problems the new rules were trying to address.

Indeed, then-Chief Justice Zel Fischer, along with other insiders, made public statements at the time that confirm what they intended was exactly what transpired — the weakening of accountability and a greater number of defendants released for free.

This includes persons who would have otherwise stayed in jail or required to post a bond.

During the hearing, public defenders argued against repealing the court rules that have made it easier for criminal defendants to be released for free. This demonstrates the contradiction of the Supreme Court, which is now claiming that the intent of the new rules was to make it easier to deny bail.

The role of the judiciary in our system of government is to interpret the law and oversee justice, not make law itself.

That's the responsibility of the legislative branch.

Hopefully, Missouri's House and Senate will fix an egregious overstepping of bounds by the Supreme Court through its creation of badly conceived bail rules that have prevented judges from doing their jobs.

House Bill 1937 stands to correct a massive wrong that was foisted not only upon Missouri's judges, but upon the residents of the state, who every day must deal with the consequences of “good intentions gone bad.”

(Jeff Clayton joined the American Bail Coalition as policy director in May 2015. He has worked in various capacities as a public policy and government relations professional for 15 years, and also as a licensed attorney for the past 12 years).

‘They are simply incarcerated because they don’t have money’; Bill limiting use of cash bail passes in Utah

Written by [Cody Blowers](#)

March 11, 2020



ST. GEORGE —A bail and pretrial release bill that limits the use of cash bail for criminal suspects in Utah passed the Senate Wednesday, joining the wave of states and local jurisdictions that have undertaken some form of bail reform over the past few years.

[HB 206](#), Bail and Pretrial Release Amendments, was first introduced to ensure individuals are given “the least restrictive conditions of release” prior to their court hearing while still maintaining public safety, was passed shortly after 10:30 a.m Wednesday.

The bill’s sponsor, Rep. Stephanie Pitcher, D-Salt Lake City, told St. George News the reason the bill was introduced is that the bail system in place “disproportionately harms the poor” and allows those with the means to post bail to be released “regardless of whether they are a danger.”

“They are simply incarcerated because they don’t have money, and that troubles me,” Pitcher said.

On the flip side, she said, those with money are released because they have the means to post bail, regardless of any possible risk to public safety they impose.

“Money does nothing to account for public safety concern,” Pitcher said.

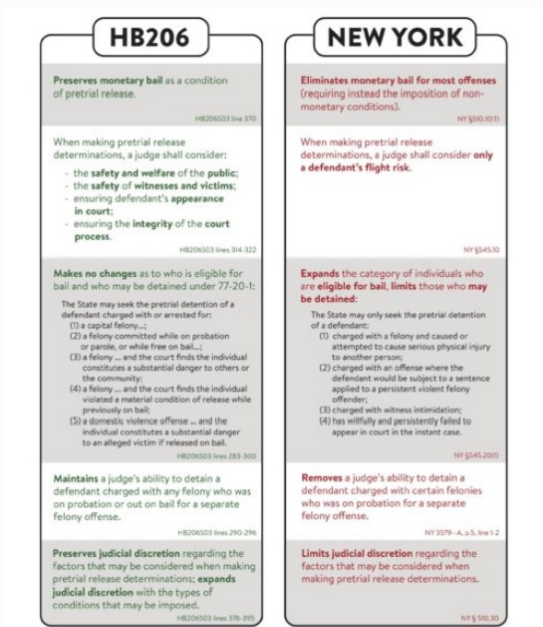
The bill would also require law enforcement to issue a citation in lieu of arrest for those charged with lower-level misdemeanors, while still retaining discretion to decide whether there should be an exception if the officer believes the individual being arrested will likely fail to appear in court, for example.

Instead, courts will need to seek other methods of pretrial release conditions on a more individualized basis.

Removing a monetary bail system is not a new idea, she said, and in fact, the federal system hasn’t used a monetary bail system since the 1980s.

She also said that while many other states have passed bail amendments, Utah’s bill came with modifications that were implemented, including one that says judges maintain the ability to detain a defendant charged with certain felonies while limiting their discretionary authority. This differs from bail reform in other states like New York, a state that removed judicial discretion altogether.

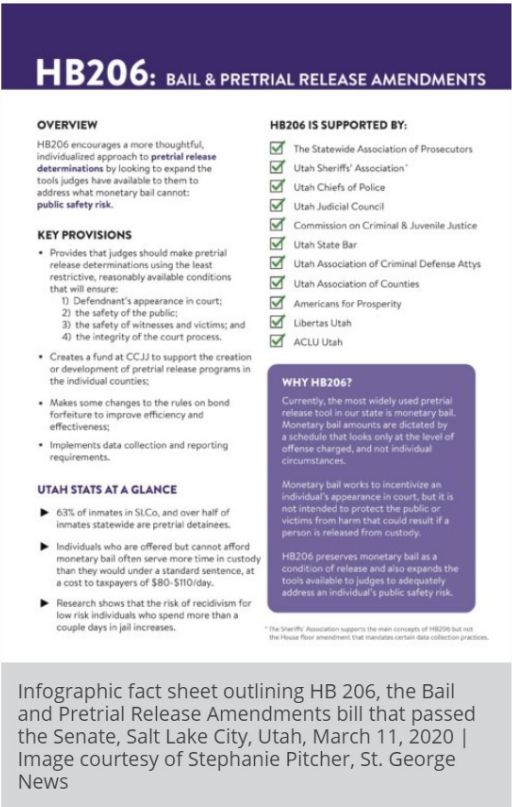
According to opponents of the bill, including the American Bail Coalition, bail reforms have been heralded as a better system for those charged, but the reality is very different. Using New York’s bail bond reform as an example, the results of which were “nothing less than horrendous.”



Infographic denoting differences between Utah’s HB 206, the Bail and Pretrial Release Amendments bill and New York’s bail amendments, Salt Lake City, Utah, March 11, 2020 | Image courtesy of Stephanie Pitcher, St. George News

with violent crimes, followed by a corresponding increase in crime. But researchers also said more analysis would be needed.

However, one of the professors involved in the study, Professor Paul C. Cassell, reached out after the bill came to his attention and wrote in a letter that he supported the bill, saying it avoids many of the issues that other states have been confronted with following bail reform efforts, “and should give Utah’s judges more



Infographic fact sheet outlining HB 206, the Bail and Pretrial Release Amendments bill that passed the Senate, Salt Lake City, Utah, March 11, 2020 | Image courtesy of Stephanie Pitcher, St. George News

Pitcher, who is a prosecutor in Davis County, said the bail industry doesn’t want the system to change.

“It’s no secret that the bail industry has an economic incentive to keep their industry relevant and keep the bail system in place,” Pitcher said.

The bail industry cites a landmark study by two professors with the University of Utah’s S.J. Quinney College of Law, Paul G. Cassell & Richard Fowles, which was released in February. It was an analysis of an Illinois study conducted following bail reform efforts in a number of counties throughout the state.

Contrary to the study’s claims that crimes committed by pretrial releases did not increase, the underlying data revealed that Chicago’s bail reform measures resulted in an increase in the release of defendants charged

with violent crimes, followed by a corresponding increase in crime. But researchers

options to address public safety issues associated with releasing defendants accused of crimes,” he wrote in the letter released to St. George News.

The bill asks the right questions about pretrial release, Cassell wrote. Previously, Utah law focused some pretrial release decisions on a defendant’s ability to post money bail, but “the more salient question,” he wrote in the letter, is whether “releasing a defendant will jeopardize public safety or fail to assure the defendant’s appearance at trial.”

The bill was first introduced on Feb. 26 and now goes to Gov. Gary Hebert for signature.

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Crime • Published February 11, 2020

Anxiety grips New York City amid concerns of rising crime



By Hollie McKay | Fox News



Two New York City officers shot in Bronx during 24-hour span

NYPD Sergeant, Founder of Blue Lives Matter NYC Joseph Imperatrice is on the scene of where the gunman opened fire inside the 41st Precinct in the Bronx.

The sense of security that for years has become synonymous with New York City has been marred by a rise in violent crime in recent months, prompting concern that the hard-earned gains slowly are being reversed.

A disturbed gunman ambushed a pair of police officers in the Bronx over the weekend, according to police, and one officer was shot in the chin. Hours later, police said the same man opened fire at a Bronx New York City Police precinct, striking one officer in the arm. The attacks have been defined as "assassination" attempts.

"I came from the generation of cops that took the city back. Crime was out of control. People forget how bad it was," retired NYPD Bronx detective, Malcolm Reiman, who served for 31 years starting in the early 1980s, told Fox News. "Those who do not learn from history are doomed to repeat it."



Retired NYPD Bronx detective, Malcolm Reiman, in 1984. (Courtesy of Malcolm Reiman)

So far in 2020, the city has already had nearly 30 percent more shootings compared to the same period in 2019, according to NYPD officials, with about 80 victims compared to 56 last year.

When reached for comment, an NYPD spokesperson pointed to a [recent press conference](#) that detailed the overall crime spike this year, up 16.9 percent compared to January of last year.

Data also shows that incidences of seven major crimes rose, including robbery, felony assault, burglary, grand larceny, and grand larceny of a vehicle. Only murder and rape reported dips.

For the first time in years, in 2019 New York City saw a rise in crime. Official statistics show more than 300 people were murdered, an increase of almost 8 percent compared to 2018, marking the highest numbers in three years.

The disturbing thought that New York could be on the edge of a crime epidemic has been fueled by a string of highly publicized and grisly killings — including the December [stabbing death](#) of Barnard college student Tessa Majors.

Between 2018 and 2019, robberies and shootings rose around 3 percent while major crimes jumped 1.4 percent. The number of rapes was the only category of the seven that dropped, falling about 2.5 percent from 1,805 to 1,760 between 2018 and 2019. Yet the NYPD has acknowledged that many such cases continue to occur without being reported.

Hate crimes also rose from 356 in 2018 to 428 in 2019.

New York City Police Commissioner, Dermot F. Shea, at the time, called the rise "a concern." However, the NYPD trumpeted that the number of criminal incidences had fallen to about 95,000 — meaning more than 800 fewer victims than a year earlier. That statistic does not account for the type or severity of the crime committed, however.



Police officers walk along the street near the parade route of the New York City Pride Parade on Sunday, June 26, 2016, in New York City. (AP Photo/Mel Evans) (The Associated Press)

So what is behind the bump in violent crime?

Police officials have pointed to gang activity and the illicit drug industry as a key contributor to increasing homicides and shootings. Experts and analysts also are questioning the newly enacted bail reform legislation, pushed through by Democrats last spring.

At a press conference last month, Shea echoed that such laws – which no longer give a judge discretion to hold violent and repeat offenders in custody and sharply lower cash bail for nonviolent defendants – are primarily to blame.

New York also has in place new discovery laws, which mandate that prosecutors submit all evidence and witness/victim contact information within just 15 days of an arrest.

Earlier this month, New York's largest police union, the Police Benevolent Association – alarmed by spiking crime numbers – asserted a "public safety emergency." In a statement, President Patrick Lynch encouraged New Yorkers to "reject Mayor (Bill) de Blasio's easy excuses."

"Bail reform is not the only problem here. The double-digit increases in shootings, robberies, burglary and thefts aren't the product of any single law or policy," he said. "They are all the result of failed leadership and a political culture that denigrates and devalues the work police officers do."

President Trump also has publicly blamed de Blasio and New York Gov. Andrew Cuomo, citing their "weak leadership."

Yet not everyone sees bail laws as the main contributor to New York's crime levels.

"It is difficult to directly draw a comparison between the bail legislation and what is perceived as rising crime in New York — it seems that the conversation is shifting to the 'anecdote' style of advocacy, which can ultimately hurt positive reforms," noted Jesse

Kelley, the government affairs manager for nonprofit public policy center, R Street Institute.

Ashley Nellis, senior research analyst at the Sentencing Project, pointed out that the bail reform law only has been in effect for one month and thus "it is just too soon to tell."

"The majority will not be found guilty of a crime," she explained. "The impact of this incarceration and the collateral consequences that accompany incarceration are much more dangerous to public safety than the bail reform law."



New York City police officers work the scene of a police involved shooting outside the 41st precinct Sunday, Feb. 9, 2020, in New York. (AP Photo/John Minchillo)

In response to a Fox News request for comment about the targeted officer shootings in the Bronx, a spokesperson for the mayor, Freddi Goldstein, said Monday that the mayor's office doesn't "want to politicize an attempt to kill our men and women." The Union condemnation was vehemently rejected by de Blasio's office.

However, there is more pending legislation that has critics on edge — and some criminal justice reform advocates hopeful.

State SB [S2144](#) is an "act to amend the executive law, in relation to parole eligibility for certain inmates aged 55 or older." Essentially, the law would make those older than 55, who had served at least 15 years behind bars, eligible for parole no matter the crime, subject to a review board.

"The number of older inmates in our prison system is rising every year even as the total inmate population is falling," the bill introduced by NY Democratic Sen. Brad Hoylman states. "The population of state prisoners over the age of 50 has increased by 81 percent since 2000. Crimes are largely committed by young people. Older inmates who have served long sentences present the lowest risk of recidivism of any other class of inmates."

It does not mandate release but allows for the case to be reviewed. The legislation has passed the Assembly and is awaiting the governor's approval.

Under the tenure of Mayor Michael Bloomberg beginning in 2002, the "stop-and-frisk" policy was implemented, enabling the NYPD to stop and question anyone in public and subsequently check them for weapons or illegal substances. However, the majority targeted were black or Hispanic, and in many cases, posed no reasonable suspicion of crimes.

"There had been some abuse with the stop-and-frisk method," acknowledged Erik Pistek, a former NYPD detective who worked under [former Police Commissioner William] Bratton before retiring in 2000. "[But] since the curtailment of [this], in addition to bail reform, in my opinion, crime is spiking, and the figures are reflecting that. The curtailment of the question-and-frisk is handcuffing the cops. Politicians give the appearance that they care more about criminals than the cops," Pistek said.



The crest on the jacket of a New York City Police Officer while on patrol.

One long-term retired NYPD official, who requested anonymity given the sensitivity of the subject, said that the problem was a push to fulfill "quotas," which resulted in inexperienced police targeting individuals to meet certain requirements.

De Blasio, who replaced Bloomberg in 2014, pledged to reform the controversial policy.

New York City once held the not-so-coveted hallmark as one of the world's most violent and crime-beleaguered cities. The narrative surrounding who and what "saved" New York City from being one of the world's most dangerous cities remains legendary.

Throughout the 1980s and into the early 90s, New York City was defined as a type of hell on earth – homicides, mugging, carjackings, break-ins and drug deals – all routine to daily life.

Several retired NYPD officers interviewed by Fox News cited the city's mammoth crack epidemic, which peaked around 1995, as a major culprit.

"The NYPD was setting up Special Anti-Crack Units, which became Tactical Narcotics Teams," Pistek continued. "We cleaned up Times Square from the sex shops and theaters, and police started targeting quality-of-life type crimes such as prostitution. The Lower East Side of Manhattan had a targeted operation known as Operation Pressure Point, which was a war on drugs at the street level."

Crime rates dropped dramatically during the latter part of the 1990s, with violent crime descending over 56 percent and property crimes dipping about 65 percent. Many credit the dive to then-Mayor Rudolph Giuliani – who became mayor in 1994 – with zero tolerance, get-tough policies.

Moreover, the size of the NYPD increased by about 35 percent during the 1990s. Many analysts also point to Boston cop William Bratton's appointment to run New York's transit police in 1990, then to lead the NYPD from 1994 to 1996 as the catalyst for the city's substantial decline in crime.

"You would walk down the subway steps every day, and all you could smell was urine; it was littered with muggers and mentally-ill people everywhere," Reiman said. "Subways were truly terrifying places."

"Those protesting today," Reiman stressed, referring to ongoing protests pushing for free service, "don't know what it was like for everyone back then."



In 2018, Rudy Giuliani, personal attorney for President Donald Trump, speaks in Portsmouth, N.H. (AP Photo/Charles Krupa, File)

In addition to cleaning up transit, Bratton put in place "Broken Windows," which involved sharp clampdowns on even minor infringements such as graffiti and subway fare violations. "Broken Windows" was built on the theory that low-level offenses foster a climate that, if unchecked, paves the way to more severe problems.

Giuliani furthermore ordered a crackdown on organized crime, setting sights on known perpetrators such as the Gambino family. Bratton returned under de Blasio in 2014, and kept a tight grip on low crime numbers, before stepping down two years later.

"Back then, we were able to do our jobs unhindered. Cops earned respect on the streets, and the bad guys knew that we were not afraid to do our jobs, and crime began dropping to record lows as a result," noted retired NYPD crime scene investigator, Joe Thompson. "There is no question that crime is rising and will continue to rise."

But Commissioner Shea remains optimistic.

"I'm so positive because I know the work of the men and women of this department and what they are capable of," he added at the press conference earlier this month.

"Challenges are not something new."

Hollie McKay has been a Fox News Digital staff reporter since 2007. She has extensively reported from war zones including Iraq, Syria, Yemen, Afghanistan, Pakistan, Burma, and Latin America investigates global conflicts, war crimes and terrorism around the world. Follow her on [Twitter](#).



[HEALTH](#) • Published March 23, 2020

Concern grows for vulnerable prison populations and employees as coronavirus spreads through overstuffed facilities



By **Hollie McKay** | Fox News



NYPD, FDNY members test positive for coronavirus

FDNY commissioner Daniel Nigro on keeping first responders safe during the outbreak.

If you thought the confined spaces of cruise ships, nursing homes and once-crowded bars were especially bad petri dishes for the spread of the coronavirus – think again. Public health officials, medical experts, lawmakers and inmates are bracing for the outbreak to continue crippling overstuffed prisons and jails across the country.

"The projections for the toll that the coronavirus might inflict on U.S. cities like New York are terrifying. But for prisons and jails, which are like small cities unto themselves, it is likely to get even more dire. Detention facilities are ripe for the spread of disease, given the rampant overcrowding and subpar health care," Jesse Lerner-Kinglake of Just Detention, which advocates for prisoner rights nationwide, told Fox News. "Worse still, many prisoners have HIV, diabetes, heart disease and other serious illnesses that put them at risk for developing complications from the coronavirus. Imagine New York City, but more crowded and with more sick people — and far fewer medical staff."

As it stands, the novel virus – formally termed COVID-19 – has already infiltrated U.S. penitentiaries on federal, state, and local levels in at least four states, including the hardest-hit regions of New York, which now has dozens of confirmed diagnoses. The rapidly ascending number of cases nationwide has prompted urgent concern for the prison system, ushering in a range of actions aimed at curbing a mass outbreak that would deluge healthcare facilities ill-equipped to contend to a pandemic.

"The handling of these situations vary, but ultimately we can say our system has been ill-equipped to deal with something of this magnitude and the prison system can no longer be society's afterthought," said Michael Mendoza, National Director of #cut50, a campaign to reduce crime and incarceration levels in all states. "With limited access to the proper resources, medical staff, and cleaning supplies, we fear prison systems could be hit the hardest by the virus. It is no wonder; the correctional staff refused to clean the area of the federal prisoners' area where he had previously been because they didn't have proper protective gear."

The United States has some 2.3 million inmates spawning around 5,000 jails and prisons across the country and is deemed to have the largest prison population in the

world and the largest per capita incarceration rate. According to the Bureau of Justice, nearly 200,000 people aged 55 and older are behind bars.



Inmates stage a protest against new rules to cope with coronavirus emergency, atop the roof of the San Vittore prison in Milan, Italy, Monday, March 9, 2020. Italy took a page from China's playbook Sunday, attempting to lock down 16 million people — more than a quarter of its population — for nearly a month to halt the relentless march of the new coronavirus across Europe. (AP Photo/Antonio Calanni)

Implementing the Centers for Disease Control and Prevention (CDC) guidelines such as routine handwashing and social distancing is especially challenging in such environments. Most inmates not only live in close proximity to one another, but share laundries, baths, and communal eating areas. Hand sanitizer, given its high alcohol content, is also mostly prohibited.

Yet it is not only about protecting inmates from the coronavirus scourge, but also the many men and women who are tasked with keeping the facilities – and thus the broader communities – safe. The Department of Justice (DOJ) run the Bureau of Prisons (BOP) has already recorded positive coronavirus cases among employees in Texas and New Hampshire.

The growing threat of coronavirus has forced prisons and jails nationwide to start changing longstanding policies and regulations. The likes of Arizona and Minnesota state prisons are now waiving the charges associated with medical visits and for medical supplies.

Some 40 states mandate that inmates must pay for soap and other personal hygiene products, but some – such as Arizona – have turned to issuing such items for free amid the outbreak.

Additional safeguards have included facilities moving to ban visitors, limited inmates' movements, and routinely screen staff for symptoms. Furthermore, at least 15 states – including Texas, New York, California and Ohio – have taken to releasing low-level offenders as well as those in the elderly and sick categories and thus considered most vulnerable to being rendered in a critical condition if they contract the unique pathogen.

Further maneuvers may be yet to come.

"The BOP may need to move inmates to better manage the detention bed space as well as assure that administrative facilities do not become overcrowded beyond available resources," the BOP said in a [statement](#) with regards to its evolving action plan. "The BOP emphasizes that all inmates, regardless of where they are being housed, are screened for COVID-19 prior to movement. Both the BOP and USMS are using screening protocols for both inmates and staff."

Some politicians and activists are calling for a much more widespread release of prisoners to help reduce those exposed to the deadly pathogen. For one, Sen. Kamala Harris, D-Calif., is publicly pushing the BOP to free "low risk" inmates, including those in pre-trial detention who do not have the financial means to post bail. Los Angeles County Sheriff Alex Villanueva has already announced that the number of arrests has dropped from an average of more than 300 per day to around 60 in recent weeks in the hopes of limiting cramped cells.

And New York City mayor Bill de Blasio announced last week that his office would begin the process of identifying inmates who are being held on minor and non-violent charges and put in-motion steps for their release.

Yet some experts are sounding the alarm of caution with regards to such a strategy.

"We must strike a balance somewhere. We are concerned about having inmates crowded into close proximity in jails and prisons, but we must also show responsibility when releasing potentially dangerous people upon society," Malcolm Reiman, a former Bronx-based homicide detective, underscored.

Jeff Clayton, Executive Director of the American Bail Coalition, concurred that they are "seeing cases where dangerous defendants are being released that might not have otherwise been released that go on to commit additional crimes."

"Administrative and judicial orders are resulting in an increase in free releases, which we assume is intended to avoid the cost of healthcare for these individuals," he claimed. "However, we would argue, this is not in line with the order of containment because now these persons are out on the streets without housing and will mix with the general population."

As of the end of the weekend, New York officials had acknowledged that at least 38 individuals had already tested positive at facilities across the city, including the notorious [Rikers Island](#) – 21 inmates, 12 Department of Corrections (DOC) employees and five employees of Corrections Health Services. A further 58 others are being monitored and are under quarantine.

Disgraced Hollywood producer Harvey Weinstein – who was [transferred](#) from Rikers to the Wende Correctional Facility – is among those who have been infected, although he is said to be exhibiting no symptoms and is in isolation.

According to one source on Riker's Island, infected inmates or those who require isolation due to being in close contact with an infected inmate, are being moved to what it termed "intake" – a secluded portion of the facility. If cases begin to climb significantly in the coming days or weeks, the insider noted, it would be likely the prisoners require transfer to nearby medical centers such as Elmhurst Hospital in Queens.

As of Monday afternoon, there were almost 370,000 confirmed cases of coronavirus globally and more than 16,000 deaths. In the United States alone, there are at least 41,167 infections, and the disease has killed 485 individuals. Domestically, New York has the lion's share of cases – almost 20,900, followed by neighboring New Jersey at 2,844 and Washington at just under 2,000.

The pandemic has caused mass fear and frustration among prison populations on a global scale. Earlier this month, Italy's prison systems moved into lockdown and thus halted visitors and external movements, igniting prison riots that left at least seven dead and paved the way for around 50 inmates to escape.



Los Angeles County Men's Central Jail in Downtown Los Angeles. The Los Angeles County Sheriff's Department released more than 600 inmates in an effort to prevent the coronavirus from spreading inside the jails.

Colombia this past weekend was also rattled by prison unrest in its capital, Bogota. The riots were spurred by inmates' concern of coronavirus spreading, in which 23 were killed. And Iran, which has been engulfed by the advancing contagion, has claimed to have released tens of thousands at least temporarily, also endured fits of rebellion over the weekend at prisons in Aligodarz and Khorramabad as inmates clashed with ICRG guards in an upset over probable coronavirus exposure.

According to Darrin Porcher, a New York-based Criminal Justice Expert Witness and Consultant, the global outbreaks and prison turmoil are indeed prompting some local police departments in the United States to regress on arresting individuals for low-level offenses to reduce the number of detainees in jails.

"Prisons are being tasked with doubling cell and dormitory populations to create space for the purpose of isolation facilities for infected inmates," he explained. "Based on the overcrowding in prisons and jails, no contingency plan was in place for the isolation of infected inmates due to a health crisis. Isolation space is the terminal component in connection with a quarantine; therefore, this amenity was unavailable."

And from Porcher's lens, the unintended consequences associated with an event such as coronavirus could be wide-reaching.

"The inability to provide adequate isolation among inmates and staff will promote and exponential spread of the virus," he continued. "The psychological impact of the crisis will further cause negative outcomes that can manifest into riots and disruptions to the day-to-day operations of the facilities."



Inmates display a sign reading in Spanish "More than 30 dead" at La Modelo jail in Bogota, Colombia, Sunday, March 22, 2020. Violence broke out in the prison out of inmates' fears that authorities are not doing enough to prevent coronavirus inside overcrowded prisons. (AP Photo/Ivan Valencia)

Furthermore, the pandemic has prompted courts in large portions of the country to put a pause on trials and hearings until further notice, exacerbating the distress and anguish for many of the incarcerated.

And while there has been no significant jail outbreak of coronavirus yet many – experts, activists, inmates, employees, and their loved ones – worry it is only a matter of time of caseloads continue to soar across the United States.

"Even illnesses like Hepatitis C, which is now curable, are still ravaging those who are locked up because treatment is so costly," added Jessica Kelley, government affairs manager of Criminal Justice Policy at the R Street Institute, added. "Correctional facilities have delayed dealing with how to handle these types of health conditions, so now, in the face of COVID-19, all of the previously unaddressed questions are rising again with no clear path forward."

Hollie McKay has been a Fox News Digital staff reporter since 2007. She has extensively reported from war zones including Iraq, Syria, Yemen, Afghanistan, Pakistan, Burma, and Latin America investigates global conflicts, war crimes and terrorism around the world. Follow her on [Twitter](#).

Friday, April 10, 2020

Coronavirus Makes Bail Reform Efforts More Urgent



By Emma Coleman



People wait to be processed in a California correctional facility. California changed its bail schedule with the intention of releasing more people from jails and slowing the spread of coronavirus in correctional facilities. AP PHOTO/RICH PEDRONCELLI

Some jurisdictions have released many pretrial detainees in an effort to decrease jail populations during the pandemic. Bail reform advocates for years fought for these same steps.

While most Americans try their best to stay six feet apart from one another when out at the grocery store or pharmacy during the coronavirus pandemic, social distancing isn't nearly as easy in jails and prisons. Already overcrowded before the Covid-19 crisis, correctional facilities have become the epicenter of outbreaks across the country, and [one jail in Chicago](#) has claimed the ignominious title of most cases linked to a single location, surpassing early epicenters like a Washington state nursing home and the cluster in New Rochelle, New York.

Criminal justice reform advocates are calling for jails to release most, if not all, pretrial detainees—meaning people who are accused of crimes and still awaiting trial—not only for their own safety, but also to protect the broader community that could catch the virus from correctional officers and other staff if more jails become outbreak vectors. But they face pushback from tough-on-crime lawmakers and the representatives of the bail industry, both arguing that sweeping release measures pose greater risks for safety than the public health benefits they might provide.

At least 1,324 confirmed coronavirus cases have been tied to 41 prisons and jails, including at least 32 deaths, according to numbers compiled by the [New York Times](#) on April 8. A significant number of those cases, which include both inmates and jail

employees, are linked to Chicago's Cook County Jail and New York City's Rikers Island. These numbers, jail officials admit, are likely a vast undercount because testing is limited only to those who show severe symptoms.



Though Cook County Jail in Chicago has been working for years to reduce its population, close quarters for detainees have made it an epicenter of the coronavirus. (AP Photo/Charles Rex Arbogast)

Activists cite these numbers as proof that mass releases are needed—but who has the final say about whether or not to release pretrial detainees has been a source of confusion from state to state. In [Massachusetts](#), the judiciary has set broad standards for releasing pretrial detainees who face nonviolent charges. The [Indiana](#) governor and state legislative leaders in that state have asked county jails to do the same. In many other places, like [Nashville](#), arguments over who should get released are playing out at the local level between public defenders and prosecutors.

Jail populations are declining across the country as sheriffs, prosecutors, and judges find ways to [release people](#) who are currently being held on bail, [drop minor pending charges](#), and [issue summonses](#) instead of arresting people. Some places, like [New Jersey](#), have issued sweeping release orders for hundreds or thousands of people at a time. Other jurisdictions, like Cleveland, have [prioritized the release](#) of medically vulnerable people from jails. These efforts are [transforming jails](#) across the country, but they also raise significant questions for stakeholders: Should all pretrial detainees be let out, or just people accused of nonviolent crimes or misdemeanors? Should there be judicial review before anyone gets released? Should special considerations be given to those more vulnerable to coronavirus, like pregnant women, the elderly, and those with underlying medical conditions?

Most criminal justice advocates are clear about their stance: everyone in pretrial detention should be released—in part because if they aren't, innocent people could start dying of coronavirus in jail. Of the roughly 631,000 people held by local authorities in jail each year, [74% haven't been convicted](#). Zoë Towns, the senior criminal justice reform director for FWD.us, an advocacy organization, said that the policies they're fighting for during the coronavirus pandemic are the same they've always been. "The reforms people are calling for now are not novel ideas for this moment," she said. "What's changed is a broader understanding from people outside the reform community as to just how urgent this is."

Before the coronavirus pandemic, Towns had been working on bail reform in New York. In 2019, the state radically changed its laws to limit the number of crimes for which defendants could be held on bail. But those changes were in place for less than 90 days when the state legislature [revoked most of them](#) in an addendum to their budget

reconciliation in early April, a move that frustrated and baffled criminal justice reform advocates.

During the time when the new bail rules were in place, the pre-outbreak jail population [dropped significantly](#), which Towns said led to significantly fewer people being exposed to coronavirus behind bars. “Look at [Rikers Island](#). That’s proof this is so necessary,” she said. “We were extraordinarily alarmed that the governor and state legislature were so insistent [on rolling back reforms] at the risk of exposing so many more people to Covid in jail.”

In late March, pressure on New York City Mayor Bill de Blasio led him to release [900 detainees](#) from the city jail in an effort to further reduce the population there. A day later, the Gov. Andrew Cuomo released [about 240 people](#) incarcerated at Rikers Island on parole violations. But even with the reduced population, coronavirus has flourished at the city’s jail. By April 8, there were 854 positive cases among inmates, correctional staff, and health care workers. At least one inmate and seven staff members [have died](#), and 59% of the jail population is now in quarantine.



Protestors call for the release of people in prisons and jail outside Philadelphia City Hall on March 30. (AP Photo/Matt Rourke)

Advocates in some other states have not been able to convince officials to approve mass releases. Another major battle over pretrial release is playing out in Texas, where Gov. Greg Abbott issued an [executive order](#) restricting the release of people in jail who are accused or previously convicted of violent crimes unless they pay bail. Misdemeanor judges in Harris County, who have been operating under a federal consent decree since their bail practices were found to be discriminatory against poor defendants, have partnered with the ACLU to sue Abbott. They say his order is an attempt to overrule the consent decree as advocates use its provisions to ask for the emergency release of thousands of people on personal bonds, a no-cost release mechanism that might include conditions like check-ins and drug tests. Texas Attorney General Ken Paxton argued Abbott was [within his right](#) to issue the executive order because Texas law “furnishes the Governor with sweeping authority to protect the public from disasters.”

The tension between state and local governments in Texas and elsewhere is an enduring problem of bail reform, said Kellen Funk, a professor at Columbia Law School. “We don’t have an American bail system. We have 5,000 American bail systems, each with a slightly different configuration for the division of power,” Funk said. “Texas puts a lot of power in the hands of the local judiciary, and it’s entirely unclear if Abbott can make that call. The places that have had more clear movement are those that have strong, centralized judiciaries.”

One example is California, where the judicial council, the body in charge of setting rules for the state’s court system, this week [set bail at \\$0](#) for most misdemeanors and certain low-level felonies, clearing the path to release those in jail who couldn’t pay bail and

preventing time behind bars for many newly arrested people. But even in states that have made significant steps towards broadening pretrial release, some criminal justice researchers say that California is simply starting to catch up to other places in the world that use pretrial detention [much more sparingly](#). “It’s dramatic, but to be clear, we’re just releasing people who are legally innocent and facing charges that in other countries wouldn’t even result in jail time if they were convicted,” said Colin Doyle, a staff attorney at Harvard Law School’s Criminal Justice Policy Program. “We’re starting from a skewed standpoint. There should be a really good reason, especially in a pandemic, as to why you should hold someone pretrial.”

Others aren’t so sure. Jeff Clayton, the executive director of the American Bail Coalition, said that sweeping state orders like the one in California are overly broad. He prefers a method akin to what’s being employed in [Pennsylvania](#), where the state Supreme Court ruled against a blanket petition to release all pretrial detainees who are being held because they cannot pay bail. The court instead told judges in each county that they should work with jails to ensure that they can follow CDC safety guidelines and, if not, consider releases. “These decisions need to happen at the local level where judges can sort through cases and have hearings,” Clayton said. “Otherwise, law and order might start breaking down a little bit.”

But criminal justice advocates and even [some sheriffs](#) worry that the real public safety risk is the spread of disease in jails. With courts shut down and police in some jurisdictions [making new arrests](#) for charges associated with coronavirus, like flaunting social distancing guidelines or stay-at-home orders, the pretrial population could continue to swell. Court officials are scrambling to find ways to hold virtual hearings and electronically release decisions, while defense attorneys raise concerns that it has become [much more difficult](#) to meet with their clients as jails restrict visitors. Attorneys also point to [research that found](#) that virtual hearings, while better than nothing in the current moment, can end up dehumanizing defendants and lead to longer jail stays and higher bail amounts. Some criminal justice researchers warn that emergency measures put in place now, like virtual hearings or using [ankle monitors](#) as a condition of release, will remain in place after the crisis has passed. “The parallel here is 9/11,” said Doyle. “A handful of emergency measures could stay indefinitely.”

In many places, though, attorneys aren’t waiting for courts to go virtual. Federal courts are being flooded with [hundreds of cases](#) from civil rights groups and individual defense attorneys, all asking for emergency measures to be taken to release inmates locked up on both federal and state charges. The barrage of cases is not unlike what occurred in the wake of the [2017 travel ban](#) on several Muslim countries, when lawyers filed thousands of cases from airports to see what would stick, said Funk. “We’re still in the early days of seeing who will come up with the theory to thread the procedural needle in all the right ways,” he said. “It’s a test of our federal system to see if we have institutions that can offer relief when local officials have been paralyzed by their own government structures or state executives.”

With the surge of momentum on the issue, criminal justice stakeholders are keeping a close eye on how the changes implemented now could impact bail reform movements going forward. Clayton said he thinks pro-reform groups in the future will point to studies of crime rates after mass releases to prove that letting people spend the pretrial period at home doesn’t endanger public safety—studies that he said will be useless. “The whole system has broken down right now, so that will prove nothing,” he said. “People are staying indoors, and the police are not looking for crime. It’s such an unusual circumstance that it just doesn’t apply.”

Towns disagreed and said that studies could be done comparatively across jurisdictions with similar crime metrics. That would allow researchers to see the effect of choosing to release pretrial detainees or not in places that employed similar recommendations for social distancing or staying at home. She’s hopeful that data could “support a broader understanding” of the bail reform movement going forward. Doyle was more cautious in his assessment, saying that after the emergency he suspects there could be a “strong push to return to normal,” but he’s hopeful for the opposite. “Coronavirus has undoubtedly made jails something that can’t be ignored,” he said. “I hope this will cause us to question using incarceration as our default mode of dealing with problems.”

Daily Journal

Criminal

Apr. 13, 2020

Emergency zero cash bail may give data for doing away with the system altogether, others say it will encourage crime

The statewide zero bail order for misdemeanors and some felonies could provide important data for the effects, good and bad, of a future cashless bail system.

The statewide zero bail order for misdemeanors and some felonies could provide important data for the effects, good and bad, of a future cashless bail system. The temporary emergency rules from the Judicial Council take effect today and remain for at least three months after the emergency is over in an attempt to “safely reduce jail populations” during the COVID-19 pandemic.

Civil rights attorney Dewitt Lacy of the Law Offices of John L. Burris said “it is a bold move” by Chief Justice Tani G. Cantil-Sakauye and he hopes the Legislature will consider making it permanent.

Lacy said if anything could be gained from the crisis, it would be the potential for empirical data and evidence on the effectiveness of a system which eliminates cash bail for certain crimes.

“There will be data and information that allows us to come to the conclusion this is not some far off dream but can be easily developed if we just have the political will to do so,” Lacy said.

However, Harmeet Dhillon of Dhillon Law Group Inc. in San Francisco, who has represented bail bond businesses, said the effects of a zero bail system will last a long time in the form of increased crime, even if the order is only in effect a few months.

Eric Siddall, vice president of the Association of Deputy District Attorneys said the order contains a drafting error that if not fixed, could lead to defendants accused of violent crimes such as violating their parole or domestic violence crimes, to be released without paying cash bail. He said this is a particular concern as people are spending more time at home together.

The council’s order included 13 exceptions to the chief justice’s zero cash bail order, with the intent to continue the existing bail schedule for violent crimes.

“However, a drafting error in her order regarding post-conviction violations creates ambiguity,” Siddall said. “It is unclear whether misdemeanors that fall into

one of the 13 exempted categories that she specifies, including domestic violence, should remain under the bail schedule.”

The order states in the section entitled, “Bail for violations of post-conviction supervision,” that under the emergency bail schedule, “bail for all violations of misdemeanor probation, whether the arrest is with or without a bench 5 warrant, must be set at \$0.”

This means someone who has committed a parole violation for a misdemeanor crime such as domestic violence would also be able to pay no bail to be released.

“I can’t think of a more serious crime right now than domestic violence, when people are stuck at home together,” Siddall said. “So I don’t think they meant to leave this loophole because it is not in the spirit of the order or even in some of the language of the order. However, the way that it is drafted right now would require a judge to do a lot of mental gymnastics to get to the intent of the order, so they need to fix it.”

The no cash bail order “doesn’t consider the effect on the general law abiding population,” Dhillon said in an email. “There has been an increase in break-ins to businesses that are locked up; people stealing with impunity, etc. We are going to see the long-term effects of increased crime from recidivists let out of jail with little to no restriction for years to come.”

Echoing some of Dhillon’s concerns, Jeffrey Clayton, executive director of the American Bail Association, said the emergency guidance will lead to “an endless revolving door” for recidivist criminals who will take advantage of the order. “If you want to go to a store in California right now and take whatever you want, you can do that every day until this order is over,” Clayton said in a phone interview. “I’m not criticizing them for trying to do something during the emergency, and obviously we’re not talking about the guy who is being falsely accused, but the reality is that once criminals figure this out, the people who have a record a mile long are going to know that not only will I not get arrested but I will be released no matter what, and even when the emergency is over, I still have 90 days.”

Lacy’s view is different, “Historically and traditionally, the cash bail system has been used as a tool to unfairly and unjustly jail the poor,” he said in a phone interview. “Since they do not have the means to pay or post bail and they are then subjected to custody in jails and often times prison after the trial occur, merely for the lack of financial means.”

It remains to be seen how the coming months will affect Californians who vote in November to either keep or overturn Senate Bill 10, the 2018 law designed to phase out cash bail in the state.

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Thursday, April 16, 2020

Will COVID-19 Produce Bail Reform?



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But opponents argue that sweeping release measures pose greater risks for safety than the public health benefits they might provide.

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Activists cite these numbers as proof that mass releases are needed—but who has the final say about whether or not to release pretrial detainees has been a source of confusion from state to state.

In [Massachusetts](#), the judiciary has set broad standards for releasing pretrial detainees who face nonviolent charges. The [Indiana](#) governor and state legislative leaders in that state have asked county jails to do the same.

In many other jurisdictions, like [Nashville](#), arguments over who should get released are playing out at the local level between public defenders and prosecutors.

Jail populations are declining across the country as sheriffs, prosecutors, and judges find ways to [release people](#) who are currently being held on bail, [drop minor pending charges](#), and [issue summonses](#) instead of arresting people.

Some places, like [New Jersey](#), have issued sweeping release orders for hundreds or thousands of people at a time. Other jurisdictions, like Cleveland, have [prioritized the release](#) of medically vulnerable people from jails.

These efforts are [transforming jails](#) across the country, but they also raise significant questions for stakeholders: Should all pretrial detainees be let out, or just people accused of nonviolent crimes or misdemeanors? Should there be judicial review before anyone gets released?

Should special considerations be given to those more vulnerable to coronavirus, like pregnant women, the elderly, and those with underlying medical conditions?

Most criminal justice advocates are clear about their stance: everyone in pretrial detention should be released—in part because if they aren’t, innocent people could start dying of coronavirus in jail. Of the roughly 631,000 people held by local authorities in jail each year, [74 percent haven’t been convicted](#).

Zoë Towns, the senior criminal justice reform director for FWD.us, an advocacy organization, said that the policies they’re fighting for during the coronavirus pandemic are the same they’ve always been.

“The reforms people are calling for now are not novel ideas for this moment,” she said.

“What’s changed is a broader understanding from people outside the reform community as to just how urgent this is.”

Before the coronavirus pandemic, Towns had been working on bail reform in New York. In 2019, the state radically changed its laws to limit the number of crimes for which defendants could be held on bail. But those changes were in place for less than 90 days when the state legislature [revoked most of them](#) in an addendum to their budget reconciliation in early April, a move that frustrated and baffled criminal justice reform advocates.

During the time when the new bail rules were in place, the pre-outbreak jail population [dropped significantly](#), which Towns said led to significantly fewer people being exposed to coronavirus behind bars.

“Look at [Rikers Island](#). That’s proof this is so necessary,” she said. “We were extraordinarily alarmed that the governor and state legislature were so insistent [on rolling back reforms] at the risk of exposing so many more people to COVID in jail.”

In late March, pressure on New York City Mayor Bill de Blasio led him to release [900 detainees](#) from the city jail in an effort to further reduce the population there. A day later, the Gov. Andrew Cuomo released [about 240 people](#) incarcerated at Rikers Island on parole violations. But even with the reduced population, coronavirus has flourished at the city’s jail.

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See also “[US Judge Denies Release of Rikers Island Inmates Over COVID-19 Concerns](#).”

Advocates in some other states have not been able to convince officials to approve mass releases.

The Battle in Texas

Another major battle over pretrial release is playing out in Texas, where Gov. Greg Abbott issued an [executive order](#) restricting the release of people in jail who are accused or previously convicted of violent crimes unless they pay bail.

Misdemeanor judges in Harris County, who have been operating under a federal consent decree since their bail practices were found to be discriminatory against poor defendants, have partnered with the ACLU to sue Abbott.

They say his order is an attempt to overrule the consent decree as advocates use its provisions to ask for the emergency release of thousands of people on personal bonds, a no-cost release mechanism that might include conditions like check-ins and drug tests. Texas Attorney General Ken Paxton argued Abbott was [within his right](#) to issue the executive order because Texas law “furnishes the Governor with sweeping authority to protect the public from disasters.”

‘5,000 Bail Systems’

The tension between state and local governments in Texas and elsewhere is an enduring problem of bail reform, said Kellen Funk, a professor at Columbia Law School.

“We don’t have an American bail system. We have 5,000 American bail systems, each with a slightly different configuration for the division of power,” Funk said.

“Texas puts a lot of power in the hands of the local judiciary, and it’s entirely unclear if Abbott can make that call. The places that have had more clear movement are those that have strong, centralized judiciaries.”

One example is California, where the judicial council, the body in charge of setting rules for the state’s court system, this week [set bail at \\$0](#) for most misdemeanors and certain low-level felonies, clearing the path to release those in jail who couldn’t pay bail and preventing time behind bars for many newly arrested people.

But even in states that have made significant steps towards broadening pretrial release, some criminal justice researchers say that California is simply starting to catch up to other places in the world that use pretrial detention [much more sparingly](#).

“It’s dramatic, but to be clear, we’re just releasing people who are legally innocent and facing charges that in other countries wouldn’t even result in jail time if they were convicted,” said Colin Doyle, a staff attorney at Harvard Law School’s Criminal Justice Policy Program.

“We’re starting from a skewed standpoint. There should be a really good reason, especially in a pandemic, as to why you should hold someone pretrial.”

Others aren’t so sure.

Threat to Law and Order?

Jeff Clayton, the executive director of the American Bail Coalition, said that sweeping state orders like the one in California are overly broad. He prefers a method akin to what’s being employed in [Pennsylvania](#), where the state Supreme Court ruled against a blanket petition to release all pretrial detainees who are being held because they cannot pay bail.

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But criminal justice advocates and even [some sheriffs](#) worry that the real public safety risk is the spread of disease in jails. With courts shut down and police in some jurisdictions [making new arrests](#) for charges associated with coronavirus, like flaunting social distancing guidelines or stay-at-home orders, the pretrial population could continue to swell.

Court officials are scrambling to find ways to hold virtual hearings and electronically release decisions, while defense attorneys raise concerns that it has become [much more difficult](#) to meet with their clients as jails restrict visitors.

Attorneys also point to [research that found](#) that virtual hearings, while better than nothing in the current moment, can end up dehumanizing defendants and lead to longer jail stays and higher bail amounts. Some criminal justice researchers warn that emergency measures put in place now, like virtual hearings or using [ankle monitors](#) as a condition of release, will remain in place after the crisis has passed.

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“The parallel here is 9/11,” said Doyle. “A handful of emergency measures could stay indefinitely.”

In many places, though, attorneys aren’t waiting for courts to go virtual. Federal courts are being flooded with [hundreds of cases](#) from civil rights groups and individual defense attorneys, all asking for emergency measures to be taken to release inmates locked up on both federal and state charges. The barrage of cases is not unlike what occurred in the wake of the [2017 travel ban](#) on several Muslim countries, when lawyers filed thousands of cases from airports to see what would stick, said Funk.

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With the surge of momentum on the issue, criminal justice stakeholders are keeping a close eye on how the changes implemented now could impact bail reform movements going forward.

Clayton said he thinks pro-reform groups in the future will point to studies of crime rates after mass releases to prove that letting people spend the pretrial period at home doesn’t endanger public safety—studies that he said will be useless.

“The whole system has broken down right now, so that will prove nothing,” he said.

“People are staying indoors, and the police are not looking for crime. It’s such an unusual circumstance that it just doesn’t apply.”

Towns disagreed and said that studies could be done comparatively across jurisdictions with similar crime metrics. That would allow researchers to see the effect of choosing to release pretrial detainees or not in places that employed similar recommendations for social distancing or staying at home.

She’s hopeful that data could “support a broader understanding” of the bail reform movement going forward. Doyle was more cautious in his assessment, saying that after the emergency he suspects there could be a “strong push to return to normal,” but he’s hopeful for the opposite.

“Coronavirus has undoubtedly made jails something that can’t be ignored,” he said.

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Thanks to the Courtesy of :

<https://thecrimereport.org/2020/04/16/will-covid-19-produce-bail-reform/>

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By Emma Coleman/Route Fifty



Chicago bail protest, 2019. Photo by Charles Edward Miller via Flickr

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Wednesday, April 22, 2020

DAVE ROSS

Has Washington been too haphazard in releasing prisoners due to COVID-19?

BY MYNORTHWEST STAFF



Washington has been releasing prisoners because of a coronavirus outbreak at the Monroe Detention Center. But there's an organization that thinks this is not being done the right way. Jeff Clayton is the executive director of the [American Bail Coalition](#), and joined Seattle's Morning News to discuss why he feels Washington state has been too lax in its approach.



“Well, I wouldn’t do what Washington state’s doing,” Clayton said. “You’ve got 12 confirmed cases of as of Friday in the state Department of Corrections facilities; we’re going to release 1,100 inmates, we’re going to call them non-violent, even though as I look at it there were 71 firearms offenses in the first batch of commutations.”

“What I would have done is either employed the intermediate sentencing review board or some administrative authority to actually look at these guys and see who they are ... to start letting people out is ridiculous, particularly when you only have 12 cases, 11 of which come from one single facility of the state of Washington,” he said.

Clayton believes this bad situation becomes worse when considering the current economic and housing conditions, which are doubly unfavorable to released prisoners looking to go straight.

“When we release these people, the two things that drive new crimes are lack of housing and lack of employment, and this is a really hard time to get housing and employment, right? So I’m not sure this is going to help containment whatsoever,” Clayton said.

Furthermore, he said it seems that the victims of the crimes are not being consulted about the potential releases and seem to have no way to challenge them.

“As far as I know, there was no court proceeding. These are administrative orders from the Department of Corrections flowing from the governor’s authority to declare an emergency,” he said.

“To put out in the newspapers in Washington State that these are non-violent cases is ridiculous. Look at the list. There’s burglaries, 71 firearms offenses on the commutation list, stolen cars, hit and runs ... that’s what we’re talking about here, and that is 1,100 offenders that are going to run wild.”



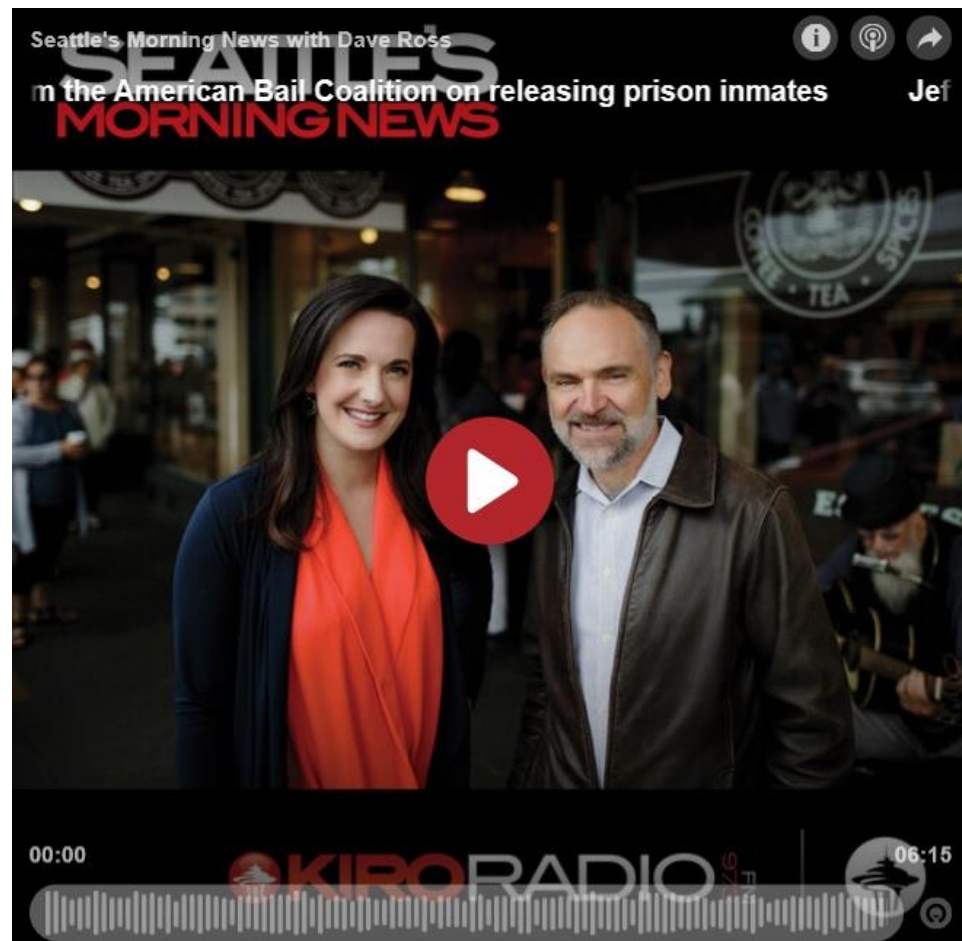
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Jeff Clayton from the American Bail Coalition on releasing prison inmates

 View description

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Published Apr 22, 2020 1:53 PM



Transcript

- 00:01
Speaker 1 Jenna's Morning News. Ross with Colleen of Ryan and Chris Sullivan. As you know, Washington has been releasing prisoners because of a Covic outbreak at the Monroe Detention Center.
- 00:12
Speaker 1 But there's an organization that thinks that this is not being done the right way. Jeff Clayton is the executive director of the American Bail Coalition, and, ah, normally your concern is with reforming the whole bail system, right?
- 00:27
Speaker 2 Well, normally work on bail reform issues not involving the covert virus. You know, reform of the money monetary bail system primarily is what we normally work on.
- 00:35
Speaker 1 Do you feel there are cases where bail has become just plain punitive?
- 00:39
Speaker 2 You know the example? They sell you of Colorado in my home state always gives us sleeping on a park bench. Ah, yeah. Okay. You've done it 10 times and you have the bailiffs \$50 because you never show up. But what are we really going to do with this person anyway? Jails not a potential penalty. What are we really doing? And so these air, basically just these low level I call nuisance crimes, you know,
- 00:58
Speaker 2 drinking in public, that type of thing, simple trespass and camping's
- 01:03
Speaker 1 you're saying stop setting bail for cases like that.
- 01:05
Speaker 2 I think so. Because, you know, there's no reason to really keep him in jail. If ultimately we're not gonna gel him at the end of the day anyway.
- 01:11
Speaker 2 And we all know it's a social problem more than it is that we need to be more punitive on some of these people.

Speaker 1	releasing hundreds of inmates for fear of a spreading corona virus infection,
01:25 Speaker 1	you feel they've been way too lax. So tell me what you would do in this case.
01:29 Speaker 2	Well, I wouldn't do what Washington State's doing. I mean, you've got, you know, 12 confirmed cases of as a Friday in the state Department of Corrections facilities were gonna release 1100. Inmates were gonna call them non violent, even though, as I look at it, there were 71 firearms offenses in the first batch of computations. But what I would have done is, I think, either employed the intermediate sensing review board, some administrative authority to actually look at these guys and see who they are. You know, one of the firearms cases, the guy had 24 prior well, court cases state cases
02:01 Speaker 2	in a one year period prior to being sensed. The department Corrections said to just just put out charges and sheets and start letting people out is ridiculous, particularly when you only have 12
02:11 Speaker 2	you know, cases, 11 of which come from one single facility of the state of Washington.
02:15 Speaker 1	So you feel this has been way too haphazard then
02:18 Speaker 2	I do, particularly Washington state. There's been no individual consideration of any of these defendants, at least in any public process where, like a victim of crime could challenge it. For example, Terrence Hedrick guy was released from King County. Ah, firearms, possession of firearm. One charge in his case he was a prior domestic violence offender picked up 15 cases since July 20 July 2nd, 20,015. And we're gonna say he's safe to release, and we need to release him because of the virus. And the other thing is, you know, when we release these people, the two things that drive new crimes, our lack of housing and lack of employment, and this is a really hard time to get housing and employment, right? So I'm not sure this is gonna help containment whatsoever.
02:58 Speaker 1	Now you mentioned getting victims involved. Soas Faras. You know,
03:03 Speaker 1	these inmates who are released? Their victims were not consulted first,

03:07 Speaker 2	as far as I know. Yeah, there were. There was no court proceeding. I mean, these air administrative orders from the Department of Corrections flowing from the governor's authority to declare an emergency. And so you know, when Terrence Hedrick guy gets out, which he already has, will that protection orders still be in effect? Will the victim? No, that is he going to respect that? These are all questions that a judge sitting in open court didn't make a decision on.
03:30 Speaker 1	Now we're not unique here. And having Teoh release prisoners are there are there, um, States What? You're doing it the right way. In your opinion?
03:39 Speaker 2	I think so. I think Pennsylvania was probably the best example. Which is Hey, follow the CDC guidelines. They don't call for releases of prisoners. They call for a specific actions to be taken. And if you can't meet the CDC guidelines, come back, let us know that. And then we can help you take some action to release some of these people in the case that one you have a pandemic in the facility, and to that you can't comply with the guidelines. And it looks like the only one in
04:02 Speaker 2	you know Washington State is Monroe Correct Correctional Complex, which has 11 of the 12 cases you know in the system. So the answer is individualized consideration, not just sweeping broad orders that we need to release people. And, you know, court in Texas denied and over broad order and said, Look, we also have to take into account public safety. I mean, that's why these people are there in the first place, you know, to put out in the newspaper in Washington State these air nonviolent cases is ridiculous. I mean, look at the list. There's burglaries or 71. As I said, 71 firearms offenses on the computation list. Stolen cars hit and runs, causing injuries, Burglaries. I mean, there's a couple of salt, two police officers. I mean, there's a lot off violent charges in here.
04:42 Speaker 1	So what would you like to see Washington State do from ah, from this point?
04:47 Speaker 2	Well, I think they've already done it. I would say stop, but it sounds to me like they predict pretty much have already done what it is they're going to dio and with the flattening of the virus and everything, they're probably just going to say this is this is it. The problem is, you know, I think there should be some accountability is to what happened when these people are released and we should find out

what the impact was so that we know next time that, you know, maybe this was in the best of ideas. So there needs to be some accountability. That's what I would call for.

05:10
Speaker 1

So while you're your normal thrust is an organization is to prevent bail from being used to essentially ah, harassed street people who have no place else to go.

05:22
Speaker 1

In this case, you think the state hasn't been tough enough

05:25
Speaker 1

in, Ah, the decision to release all these prisoners.

05:28
Speaker 2

You know, when we're talking about the governor and we're talking about the Department of Corrections, we're talking about hardened convicted offenders, not homeless guys, you know, using drugs in the street. That's not what we're talking about here. We're talking about 71 firearms offenses where they have prior violent crimes, which is why they couldn't have a firearm. That's what we're talking about. We're talking about burglaries when people are breaking into other people's houses to commit a felony against them or their property. That's what we're talking about here and that. And that is 1100 offenders that are gonna run wild. And I think the state owes it to the public to tell us what happened because of that. Because I don't think the emergency of 12 incarcerated individual cases from 11 of which from one facility was enough of an emergency to do this.

06:07
Speaker 1

Jeff Clayton is the executive director of the American Bail Coalition. Jeff, thank you very much.

06:12
Speaker 2

Thank you. Have a good day.



U.S. NEWS

How the coronavirus could kill the \$2 billion US bail bond business

PUBLISHED SAT, MAY 9 2020 9:00 AM EDT | UPDATED SAT, MAY 9 2020 4:47 PM EDT



Sully Barrett

KEY POINTS

- More than 20,000 U.S. prisoners so far have tested positive for Covid-19, according to data from journalism nonprofit The Marshall Project.
- To reduce the density of inmates and curb the spread of the coronavirus, correctional facilities nationwide released more than 16,000 people from incarceration.
- The pandemic is now forcing local criminal justice systems to take stock of who is in their jails and why.
- With no bonds to post, many bail bond companies have had to lay off their entire staff.



A decades-long debate about bail bonds as one of the biggest causes of jail density, has been given new intensity by Covid-19. A need to reduce crowded prison populations could threaten the \$2 billion industry.

George Rose | Getty Images

Prisons and jails are at a significant risk of a [coronavirus](#) outbreak, with inmates living, eating and bathing in shared spaces. The situation has added intensity to a decades-long debate on one of the biggest causes of jail density — a system that accounts for a [\\$2 billion industry](#) in the U.S. That system is money bail.

Over 20,000 U.S. prisoners so far have tested positive for Covid-19, as of May 6, according to [data](#) from journalism nonprofit The Marshall Project. To reduce the density of inmates and curb the spread of the coronavirus, correctional facilities nationwide released [more than 16,000 people](#) from incarceration throughout the pandemic.

Of the 631,000 people held by local authorities in U.S. jails, 74% have not been convicted of a crime, according to the [Prison Policy Institute](#). Instead, many are incarcerated before their trial because they cannot afford to pay money bail, whether out of their own pocket or through a commercial bail bondsman.

The United States is [one of two countries in the world](#), along with the Philippines, that has a commercialized bail industry.

Jeff Clayton, the executive director of the [American Bail Coalition](#), said many bail bond companies have had to lay off their entire staff because “there are no bonds to post.”

“Business is way down; let’s put it that way,” Clayton said. “Most of the criminal justice system is shut down right now, and that includes bail agents. Some agents have posted less than 10% of the bonds they normally would have posted.”

There are approximately 14,000 bail agents in the U.S., according to trade group [Professional Bail Agents of the United States](#). California has around [3,200 licensed bail agents](#) and organizations, and Clayton said that California, Texas and Florida are home to the largest bail bond markets. The size of each state’s bail bond industry closely correlates to its population, excluding Wisconsin, Oregon, Kentucky, Illinois and Massachusetts, where commercial bail bondsmen have been [outlawed](#) or [eradicated by legislation](#).

Michelle Esquenazi, the CEO of Empire Bonds and founder and senior vice president of the [New York State Bail Bondsman Association](#), said an environment with fewer arrests and new reform legislation will cause bail bond business to suffer.

“As it pertains to Covid-19, businesses have to pivot and be able to ebb and flow, period,” Esquenazi said. “Of course, bail companies must be able to ebb and flow. Does that mean that some won’t do as well? I’m certain that’s the case scenario.”

Esquenazi, the former senior vice president of [Professional Bail Agents of the United States](#) and the self-dubbed Bail Bond Queen, said the industry believes that those incarcerated for “crimes without human victims” should be considered for release without bail.

Covid-19 impact on existing prison political battles

In the state's [April 2 budget bill](#), New York rolled back [last year's bail reforms](#), which eliminated money bail for most misdemeanors and nonviolent felonies and allowed 90% of new defendants to stay out of jail while awaiting trial. The reversal came after receiving severe backlash from law-enforcement authorities and politicians, who argued that the reforms threatened public safety.

Sandra Mayson, an assistant professor at [University of Georgia School of Law](#) who has researched bail reform, said the pandemic is forcing local criminal justice systems to take stock of who is in their jails and why, which is “not something they had been doing with regularity.”



A Sheriff's deputy and on-site nurse give medications to an inmate at Las Colinas Women's Detention Facility in Santee, California, on April 22, 2020.

Sandy Huffaker | AFP via Getty Images

“The bail reform conversation has lately been centered on who's dangerous enough to need to be detained, when it's really about public safety,” Mayson said. “Too often in my view, people assume that the calculus is a tradeoff between public safety on one hand and the liberty of the accused on the other. There are public safety concerns on each side of the equation.”

According to a [2015 study](#), people detained before trial were four times as likely to be sentenced to incarceration than those released before trial. People held for 8-14 days before trial were more likely to recidivate, or commit more crime, after completing their sentence.

We're all being forced to confront the extreme threat in jails and the threat of having too many people in jails.

Sandra Mayson

UNIVERSITY OF GEORGIA SCHOOL OF LAW

Mayson said people usually forget that throwing someone in jail is a dangerous situation in the first place.

“Now the danger in jails is very real,” Mayson said. “We’re all being forced to confront the extreme threat in jails and the threat of having too many people in jails.”

About 2.3 million are incarcerated in the U.S. — the [world’s largest prison population](#) in any country by far — with nearly 83% in state prisons or local jails. People not found guilty of a crime accounted for 95% of jail population growth from 2000 to 2014, according to [data from the Bureau of Justice Statistics](#).

Incarcerating people before trial costs U.S. taxpayers \$38 million a day, according to [a 2017 report from Prison Policy Initiative](#), a nonprofit research organization. That adds up to nearly \$14 billion annually.

In contrast to New York, California passed an April 6 [emergency bill](#) setting bail at zero for misdemeanors and low-level felonies and postponing trials that could result in evictions or foreclosures.

Eliminating money bail just a ‘first step’

Some reform advocates argue that these issues span much further than money bail.

The Pretrial Justice Institute says on its [website](#) that eliminating money bail, while a necessary first step, does not fully “address bias and unequal outcomes.” It suggests various additional methods of improving pretrial justice, including reducing arrests, restricting detention and increasing the equity of marginalized communities in decision-making.

Esquenazi said most people ignore that bail bond companies ensure that the accused will appear in court and “the crime victim could always have his/her day in court.”

“Our industry is not the demonic spawn of Satan,” Esquenazi said. “We have been attacked, and it really is unwarranted, especially here in New York.”

Mayson said that while she has sympathy for the individuals running bail bond businesses, the industry as a whole poses a significant problem to mass incarceration.

“In the aggregate, unfortunately, I think it’s an industry that has been built on the backs of the poor,” she said. “And it does dramatically more harm than good.”



2.3 million are incarcerated in the U.S., the world's largest prison population in any country, with nearly 83% in state prisons or local jails.

Gary Friedman | Los Angeles Times via Getty Images

Both crimes and arrests [are down nationwide](#) during the pandemic as people obey stay-at-home orders and police departments reduce operations.

"It's not that we're not enforcing [the law]," Jorge Campos, chief inspector of the Gainesville Police Department in Florida, [told USA Today](#). "It's that we're finding alternative ways of dealing with the issue rather than make physical arrests."

Many police departments are making efforts to issue citations instead of making arrests in order to avoid physical contact. As of April 1, [more than 1,400 NYPD officers](#) had tested positive for COVID-19, and [one out of six NYC officers](#) were out sick or in quarantine.

The number of inmates in New York City jails fell more than 1,100 — roughly 20% of the city's jail population — between March 16 and April 6, [according to Mayor Bill de Blasio's office](#).

Clayton said he does not think the circumstances of the pandemic warranted releasing prisoners.

"We've got an emergency, and the last thing police and fire departments need to be doing is handling additional crimes," he said.

Mayson said releasing inmates, along with reducing arrests in the first place, is a "logical approach" to improving the criminal justice system. "It is so patently within the realm of the possible — and not even that hard — to reduce the number of people in the jails that we have," she said.



This story has been updated to reflect that the number of U.S. prisoners who have tested positive for Covid-19 reached more than 20,000, as of the latest data available through May 6.

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Patricia Wenskunas - Founder/CEO of Crime Survivors. (Photo: Crime Survivors/screen capture ABC7)

Victims of Crime Violated Once More by Faux Victims' Groups

'Crime victim advocates' call for more inmate releases

By Patricia Wenskunas, May 12, 2020 4:38 pm

Special to California Globe by Patricia Wenskunas, Founder/CEO of Crime Survivors

Something happened a few weeks ago that crushed my soul like nothing I've ever experienced. I don't make a statement like that easily. But in a million years I could never imagine what I witnessed could occur. I spotted a headline in the *Daily Journal*, a Los Angeles-area legal newspaper, that read, "Crime Victim Advocates Call For More Inmate Releases, Services." There in black-and-white was a proclamation that was the very antithesis of what anyone who truly believes in helping victims of crime would ever say.

Incredibly...inexplicably, it seemed, was a shout-out to the world from someone I could only assume was a soldier in arms, calling for something that would negate all the hard-earned progress that crime victim advocates have made over the past several decades.

As it turned out, the article concerned the efforts of an organization called **Crime Survivors for Safety and Justice**, which shook me up once more. I was very familiar with this group, whose name bore more than a passing resemblance to my own victims' rights organization, "Crime Survivors." There were a couple of big differences, however. First, I formed my group 17 years ago, while they had only been around since 2013. That they should choose a name so similar to my organization's seemed more than a coincidence. It was as they were trying to deliberately mislead the public and create confusion between our two very different groups.

While Crime Survivors for Safety and Justice touts itself as being an advocate for victims of crime, they are actually far more concerned about the rights of criminal defendants. Even their website intimates their thinly-veiled, soft-on-crime agenda by suggesting the organization and its staff embrace “creating a more humane criminal justice system” and that they “fight for policies that promote healing over retribution.” One of its leaders was quoted in the Austin American-Statesman as saying, “We support common-sense changes to our criminal justice system that help break the cycle of crime and make our communities safer.” They offer powerful support for perpetrators of violent crime. As for the victims? Not so much.

The mystery was solved, but the actions of Crime Survivors for Safety and Justice shouldn't have surprised me. My devastation stemmed from something else I noticed in the story. One of the nation's most reputable victim advocacy groups, the **National Center for Victims of Crime (NCVC)**, was reported as being in support of releasing more inmates into our communities. This time there was no mistaken identity involved. An organization that has steadfastly supported victims for years had crossed the line to support convicted criminals.

As I read on, it wasn't just NCVC, but other well-respected victims groups, including the **Health Alliance for Violence Intervention** and **Still Standing Against Domestic Violence** who were said to be in support of the wholesale release of inmates into our communities. They claimed that rehabilitation and shorter sentences were what victims wanted, even citing a poll in support of the move.

The 180 degree reversal of these formerly honorable organizations is not only deeply disappointing, it is confounding. The very foundation on which they were created has been turned on its ear for reasons that are equally mysterious.

There are many possible reasons why both public figures and organizations that are well-known for their principles may shift their stances. As personally crushing as it is to me to see them abandon their values, along with the very people they promised to serve and defend, it only galvanizes me all the more to fight for what is right.

The purpose and mission of Crime Survivors — my original, authentic advocacy group — will never change. We have operated on a shoestring budget with minimal salaries and limited staff to ensure that victims get their chance at justice. Our values are not for sale and we will never sell out at any price. While we fight for the abused, others can choose to fight for the abuser. While we fight for the vulnerable, others can choose to fight for the bullies. While we fight for the victim, others can choose to fight for criminals.

My soul may have been crushed, but it is resilient, just as all survivors must learn how to be. The organizations and individuals behind them who have lost their way will face their own reckoning in due time. In the meantime, I commit myself to fighting the good fight, and invite one and all to join me in working on behalf of the victims who often see us as their last hope.



Patricia Wenskunas

Patricia Wenskunas is the Founder/CEO of Crime Survivors. Patricia nearly died after being brutally assaulted by someone she knew and trusted. Following the attack, Patricia dedicated her life to fighting for victims and their rights by founding Crime Survivors (www.crimesurvivors.org). The non-profit organization is dedicated to ensuring that victims and survivors of violent crime are protected and their rights supported by working closely with law enforcement, the judicial system and the community.

Thursday, May 21, 2020

NEWSCRIME AND PUBLIC SAFETY

Woodland voters could help determine fate of cash bail



Suspects charged with a felony, unable to afford bail, wait in jail for a minimum of 90 days before their trial date, according to Yolo County Chief Public Defender Tracie Olson. Monroe Detention Center is a medium to maximum security facility in Woodland. REGINA REDDICK-SPECIAL TO THE DEMOCRAT

By [WOODLAND DAILY DEMOCRAT](#) |

By Mark Paul and Regina Reddick
Special to The Democrat

Voters in Woodland and throughout the state will likely decide the fate of California's cash bail system this coming November.

Former Gov. Jerry Brown in late 2018 signed a measure to replace the existing cash bail system with a risk assessment test to determine if a detained suspect should be granted pretrial release.

Those who opposed the measure, Senate Bill 10, immediately went to work, eventually gaining the signatures needed to force a referendum on the bill, with voters set to make the final decision on the November 2020 ballot.

John Bauters, budget advocacy director of Californians for Safety and Justice and mayor of Emeryville, has worked extensively on SB10 and said that the high cost of bail in California was the driving force behind the bill because it is "disproportionately expensive" for people to access the cash bail system. He said that according to recent studies, the average bond is \$50,000. Each county has its own set bail schedule.

Bauters said defendants have two options; full payment or collateral of equal value to the full bail amount, or, alternatively, bail insurance through a private bail agent or bondsman. The latter route requires a 10% nonrefundable fee, which comes to \$5,000 on the average bond. If the defendant is unable to produce bail, they must wait in custody until their hearing.

Backers of SB10 say the high cost of bail has led to a systematic racial divide in the justice system, leaving members of ethnic communities more likely to remain in jail because they cannot come up with the money for bail.

“There’s a disproportionate number of people of color who are negatively impacted by the cash bail system,” Bauters said, “especially young men ... between the ages of 18 and 29, who sit in jail pretrial far longer because they do not have access to cash systems or wealth systems that enable them to secure their own release through money bail.”

This leads to “different types of choices that have permanent impacts on their lives,” Bauters said. “What we find is that people who sit in jail pretrial and are unable to pay for their release are far more likely to enter into plea arrangements.”

According to Bauters, the risk assessment test is designed to combat the financial inequality of California’s justice system. Under the test, defendants are released from jail based on their assessed risk level. Those deemed low risk to the public will be released on their own recognizance, while high-risk suspects will remain in jail, unless a judge rules otherwise.

Yolo County’s Chief Public Defender Tracie Olson said that the cash bail system has a disproportionately negative impact on lower or fixed-income individuals and especially on the black community.

“The judge doesn’t look at anything but the charges,” Olson said. “It’s ridiculous.”

Olson said that people who have “committed the exact same crime” get released while others sit in jail.

“Outcomes are better for people when they fight from the streets,” Olson said. “When people are released pre-trial they can go to work or treatment programs which shows they’ve been doing positive things in the community.”

Olson said that those who can’t afford bail have to stay in jail and have nothing to show for their time when they appear in court. She said that people charged with a felony wait a minimum of 90 days in jail, but could stay in for months and even years, depending on the case.

Olson said she would like to see California return to a system of people being released fairly, and although the risk assessment test isn’t perfect, it’s a good start.

Attorney Jeff Clayton represents the American Bail Coalition as executive director. The coalition is a trade association of insurance companies who are underwriters of criminal bail bondsmen.

“The risk assessment system does not challenge the racial disparities that it claims to be solving, rather it is actually more unethical than the system it replaces,” Clayton said.

One factor of the risk assessment is that subsequent offenses, regardless of degree, create a higher risk score and what Clayton refers to as; “the ratchet, which is, you’ve paid your debt to society, but the risk assessment doesn’t recognize that,” Clayton said.

“If SB 10 passes it will eliminate the commercial bail industry in California, almost completely,” Clayton said.

He knows he has a vested interest.

“I don’t deny that, but I think I make good arguments,” Clayton said. “And what I would say is, it’s about the right to bail, not necessarily the right to commercial bail. So, start with bail; that I have a right to put up my house for my relative to get them out of jail and go from there.”

Mike Balasa is a bail bondsman with Bull’s Eye Bail Bonds, serving Yolo, Sacramento, and El Dorado counties.

“Bail was never about protecting the public,” Balasa said. “It’s about accountability. We ensure that people will appear in court.”

Balasa said that when someone doesn’t appear, it is the responsibility of the bail bondsman and not the sheriff to look for the suspect, which saves taxpayer dollars.

“It doesn’t cost the county a dime for me to apprehend somebody,” Balasa said.

Balasa said that when people don’t have the means for bail, he will often accept 25% as a down payment to cover his hard costs and work out a payment plan for the other 75%.

“It’s a competitive business, we all have the right to extend credit,” Balasa said. “If you’re trying to bail out and don’t have the means to pay back, you won’t get a loan.”

Balasa has been in the bail bond industry for 25 years.

“I like it, I like what I do,” Balasa said. “I never thought I’d be a bail bondsman.”

Balasa has been preparing for the possibility of the end of cash bail.

“I’ve been going to American River College to retool because I like to eat,” Balasa said. “I just took my last final.”

SB 10 will appear on the November ballot as a referendum. A “yes” vote will eliminate cash bail in California and replace it with a risk assessment test and a “no” vote will abandon the risk assessment test and keep the cash bail system in place.

This story is part of a collaborative project between The Daily Democrat and seniors in the journalism program at Sacramento State. For more information about the program visit facebook.com/sacstatejournalism.

Wednesday, May 27, 2020

Controversial bail reform measure heading to Nov. ballot

By Robyn Dobson and Brooke Uhlenhop Special to the Citizen
May 27, 2020

A ballot initiative on whether to eliminate cash bail in California will be decided by voters this November.

California's current bail system allows many detained criminals to post bond and be released from jail before trial. The November referendum would replace cash bail with a risk assessment to determine if a detained suspect should be granted pretrial release.

A "yes" vote on the referendum would uphold Senate Bill 10, which was passed in 2018 and did away with cash bail, though its effects are on hold, pending the November election.

Elk Grove police spokesperson Jason Jimenez said the effect of SB10 is currently unknown to the city of Elk Grove and that it is up to the voters.

"We will continue to do what we do regardless of whether there's bail or not," he said. "And we'll continue to work hard on the streets to ensure that our community is safe."

John Bauters, the budget advocacy director of Californians for Safety and Justice, argued that bail schedules in California are currently disproportionately high, making the system difficult for most people to afford.

"The average bond in California, according to the most recent studies, is about \$50,000," he said. "That is five times the national average for what a bail schedule is."

Bauters, who has worked on SB 10, said one of the goals of the law is to give the courts the tools needed to discern if a suspect is a threat to public safety.

Detained suspects would then be categorized as low, medium, or high risk. Those deemed as low risk would be released from jail, while high risk suspects would remain in jail with a chance to argue their case before a judge.

Topo Padilla has worked in the bail industry for over three decades in the Sacramento area and is the co-partner at Greg Padilla Bail Bonds. He is also the president of the Golden State Bail Agents Association and serves on the board of the Professional Bail Agents of the United States. Padilla agrees that bail schedules in California are too high and he has been working to try to lower them throughout the state.

"Since 2009, my bail association that I represent has been trying to work with the legislature, judges and the law enforcement to lower the bail schedules in California," he said. "Nobody, and I mean nobody - judges, DAs, cops, even defense attorneys - would work with us and help us try and lower the bail schedules in California. And rather than doing the easy thing, which would be lower the bail schedules, they threw the baby out with the bathwater and said, 'Why don't we just eliminate the industry and then we won't need to fix it.'"

Padilla noted that Washington, D.C. currently has a zero bail system in place that works similarly to SB 10. The budget for their pretrial release system is \$71 million for a population of 650,000

people, he said.

“If you take those numbers and you put in our 39 million people that live in California and you do an algebra program, the budget will be over \$2.5 billion, not million, billion dollars to run a pretrial release program in the state of California,” Padilla said. “You think we need that right now? Nope. All we need to do is really lower the bail schedules.”

Jeff Clayton, attorney and executive director of the American Bail Coalition, is also against the elimination of cash bail. The American Bail Coalition organized a political action committee against SB 10 called the Californians Against the Reckless Bail Scheme.

Clayton has worked on the bail reform issue since the early 1990s and said he does not think SB 10 is the right way to solve California’s bail problem.

“The right to bail is the only way to challenge the government’s thirst for incarceration, period. There is no other mechanism,” he said. “We can say that we trust the government to make the right decisions to let people out, but I don’t. I trust the community and I trust everybody else.” Clayton also warns against preventive detention. “Preventive detention” is the detention of defendants with the purpose of preventing them from committing a crime.

“There are two things you need to understand, to understand bail reform. One, is preventative detention. That’s the evil here,” Clayton said. “So, the government’s thirst for incarceration under a system of preventative detention will increase. And it makes sense, right? Because if judges had the option of release or detention, they would go for detention.”

Clayton said that bail bondsmen are trying to get people out of jail while the state wants to keep them in. The current bail system is a way to ensure that people will appear to their court date. Bauters said that cash bail is a wealth-based system, which has also greatly impacted minority populations. He said the bail system allows detained suspects to be released based on their “pocketbook,” which does nothing to promote public safety.

“There’s a disproportionate number of people of color who are negatively impacted by the cash bail system,” Bauters said. “This is down a long lineage of things that I could go on forever about how American institutions have historically institutionalized racism and biases against people of color through the way we’ve implemented things.”

However, Clayton disagrees. He thinks preventative detention and getting rid of cash bail will become a “civil rights atrocity.”

“I agree that the system is biased against those who don’t have resources and has been shown to be biased in many respects against those who are nonwhite populations,” he said. “But I don’t think Senate Bill 10 is going to remedy it. If anything, I think it will make it worse.”

Amid the COVID-19 pandemic, the Judicial Council of California enacted emergency court rules in April in an effort to keep as many people away from courthouses as possible. According to Bauters, rule number four dropped the bail schedule to \$0 on several low-level offenses.

“I think which most people don’t realize is that for over a week now, everybody in California, with a set of exceptions that the court created for domestic violence cases and other things that we agree with, the court has been working with a zero cash bail system right now,” he said. “You haven’t seen a huge spike in crime. We haven’t had the news full of stories of those things.”

Padilla, however, countered this claim and explained that it was not as simple as it may seem. Padilla said law enforcement has only been enforcing certain crimes because of the effects of emergency court rules.

“They know that A, most likely they won’t be able to book the person to the jail and B, if they do catch them it’s just going to be a catch and release right on the scene,” he said. “Number two, as importantly, they are not booking. So if you have a warrant for your arrest, they’re not booking most warrants. If warrants aren’t being arrested, it’s very, very easy to say, look, crimes down.”

SB 10 would effectively remove the need for the bail bonds industry, putting long running businesses like Padilla's in danger. While he agrees that bail reform is severely needed in the state, Padilla thinks the use of the risk assessment is ridding people of an essential right. "Of course, I'm speaking on me because this is what I do for a living and I've done this for 38 years," Padilla said. "Certainly, I'm talking to you from that angle, but more importantly, I'm talking to you as a taxpayer and somebody who understands the criminal justice system and seeing that getting rid of a person's constitutional right to bail out of jail is absolutely wrong."

Editor's note: Robyn Dobson and Brooke Uhlenhop are journalism students at California State University, Sacramento. They are being taught this spring by Phillip Reese, a state reporter at the Sacramento Bee and an assistant professor at CSUS. This is the third story submitted by his students as part of a partnership between the Citizen and Reese's class. For more information about the CSUS journalism program, visit facebook.com/sacstatejournalism.



[LOCAL](#)

Future of justice system and released prisoners

As the country reopens, many questions remain



Author: Amy Lutz (FOX43)
Published: 8:48 AM EDT June 4, 2020
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YORK, Pa. — The Coronavirus pandemic will have a lasting effect on many things, including the criminal justice system. As communities struggle to move into recovery mode, what happens now to inmates who were released to slow the spread of COVID-19? Are they free until their court date or expected to return back to jail? FOX43's Amy Lutz talked with the Executive Director of the American Bail Coalition to see what he predicts.

"I think it's gonna take a while to kinda sort out what happened with all these cases. Court in many cases have not been scheduled, we don't know if people will fail to appear, we don't know if people relocated as a result of the corona virus,.. like.. let's say you had a pending DUI, you're 21 years old at college and you moved home, then you're not going back, so what's gonna happen," Jeffrey Clayton questioned.

He also said that you may be surprised to hear the type of offender who typically fails to appear most often. It's not felons.

"Surprisingly people out on felony bonds are less likely to commit a new crime than there are on misdemeanor bonds and you wouldn't think that, you'd think well they are felons, they commit a lot of felonies. But no, because they're facing time in the big

house, they have to be a good boy right now because they have to get through the case. "Misdemeanor cases that carry a one day jail sentence, it doesn't really matter so you see a higher crime rates and higher failure to appear rates in the lower level cases, if you can believe it," he said.

Clayton said that eventually, all cases of released prisoners will have to be addressed and there could be insufficient staff to handle all the backlog. Add in the cost involved with bail reform, and because COVID-19 decimated the economy, he believes every jurisdiction in the country will find itself under severe monetary constraints going forward.

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Minneapolis looters sprung from jail without bail



A man jumps off a burning car in a Target parking lot Thursday, May 29, 2020, in Minneapolis during a third night of unrest following the Monday death of George Floyd in Minneapolis police custody. (David Joles/Star Tribune via AP)

By [Jeff Mordock](#) - *The Washington Times* - Wednesday, June 10, 2020

Hundreds of rioters arrested by the Minneapolis police during the George Floyd protests were immediately back on the streets when authorities refused to press charges and released them without bail.

Law enforcement advocates said the city's get-out-of-jail-free cards for violence, vandalism and looting sets a terrible precedent.

"This is dangerous because it sends a message that at the end of the day there are no consequences," said Jeff Clayton, executive director of the American Bail Coalition, a trade association of bail insurance companies. "These are not people trespassing, these are burglaries and property destruction."

Between May 26 and June 2 — the first few days and nights of civil unrest in the wake of Mr. Floyd's death — 170 people were arrested in Hennepin County, where Minneapolis is located.

The charges included burglary, assault, rioting and weapons charges, according to a study by the American Bail Coalition.

A total of 167 of those arrested, 98.2%, were released within hours. Only 10 of those individuals, roughly 17%, were required to post bail for release, according to the study.

Prosecutors only filed charges for 49 or 29% of those arrested.

"The data shows prosecutors didn't take this seriously," Mr. Clayton said. "It seems inconsistent because if there were no riots these people would not have gotten away with it whether in Hennepin County or across the country."

Hennepin County Attorney's Office spokeswoman Lacey Severins said the decisions on charges and bail recommendations were made individually in each case based on state guidelines.

"Bail determinations relate to the crime charged and the background information of the individual," she said. "The final bail was set by the court after arguments from the state and the defense."

A spokesperson for the Hennepin County District Court did not respond to a request to comment.

Mr. Clayton said some of the bail decisions defied logic.

In one arrest, Jaleel Stallings was charged with two counts of attempted second-degree murder, two counts of first-degree assault and one count of second-degree assault, along with three other charges for firing multiple shots at police officers.

The attorney's office sought bail of \$500,000 but Mr. Stallings was released from custody five days later after only posting \$75,000 bail. It is not clear who bailed him out from the Hennepin County Sheriff's records.

"That's small potatoes for someone who took shots at police officers," Mr. Clayton said.

Ms. Severins said her office followed the bail guidelines in the case of Mr. Stalling to ensure “a fair, neutral and balanced approach.”

Kellen Funk, a Columbia Law School professor who has written about bail reform, said bail decisions are a byproduct of multiple factors, including local rules, the judge’s views and the case itself.

“Bail is always a creature of local regulation,” he said. “We don’t have an American bail system, we have 5,000 different bail systems that can vary enormously from jurisdiction to jurisdiction.”

The lack of bail in the Minneapolis cases was consistent with similar approaches across the country but cautioned that every bail decision is unique, he said.

Mr. Funk noted that bail is meant as a means to get someone to show up in court, not as a form of punishment because at that stage an individual has not been convicted of a crime.

“Bail and pretrial detention are not supposed to be punitive,” he said. “We still have untried, unconvicted defendants.”

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Donation Wave Powers Bail Funds' Future

By RJ Vogt | June 21, 2020, 8:02 PM EDT



Rahim Buford, manager of the Nashville Community Bail Fund, works at his office in between bailout trips to local jails. His organization has received an unprecedented level of donations after the police killing of George Floyd. (Annie Pancak | Law360)

The Minnesota Freedom Fund is a small nonprofit that since 2016 has paid bail for people being held in jail pretrial.

Less than a month ago, the fund was posting a maximum of \$1,000 per day. But after the killing of George Floyd by Minneapolis police officer Derek Chauvin, something extraordinary happened: Spurred by celebrity endorsements and "match" campaigns, more than 1 million people donated over \$35 million total to the MNFF in three weeks.

"We're usually in the ballpark of \$100,000 in annual donations, in a good year," said Jared Mollenkof, a public defender and MNFF board member. "There's no way to compare what is normal to this moment."

Just \$250,000 of that money has been spent bailing out protesters during the ongoing uprising against police violence and racial injustice, in part because most Minneapolis-area protesters who were arrested have been released without bail.

But having already paid "all the protest bails that have come our way," the MNFF said it's interested in going further — and maybe even bailing out all those incarcerated in the Hennepin County jail.

"We are working with a group of arrestees who will help coordinate support for those fighting charges," the group said on [Twitter](#). "Support starts with legal representation, court fees and transportation, and starts with \$150,000... We aren't going to leave folks hanging, just like we aren't going to stop paying bail."

The wave of donations flooded the coffers of more than just the MNFF.

In Chicago, a bail fund that might normally raise \$12,000 in a two-week span received roughly \$5 million. In Brooklyn, a group received more than \$1.8 million, even though its work now focuses on immigration bonds, not criminal bail. In Nashville, a fund that typically receives \$50,000 in a year has received more than \$100,000 since Floyd's killing.

"Prior to this, we had to worry too much about keeping the operation going," said Rahim Buford, the Nashville Community Bail Fund manager. "Now we can focus on trying to bring about structural change."

In total, at least \$70 million has been donated to nearly 100 bail funds around the country since Floyd's killing, according to Pilar Weiss, director of the Community Justice Exchange. Some of that money has gone to 50-plus new funds created to help bail out those arrested during the ongoing Black Lives Matter protests, said Weiss, whose group oversees the National Bail Fund Network.

"We're hopeful that this much interest and broad support for bail funds and the movement to defund the police and for Black lives means that ... in some places, perhaps bail funds will no longer need to exist very soon," she said.

Law360 spoke with leaders from the Minnesota Freedom Fund, Chicago Community Bail Fund, Brooklyn Community Bail Fund and Nashville Community Bail Fund to learn more about how the wave of donations is impacting their work.

Minnesota Freedom Fund

For Mollenkof, the outpouring of support for Black Lives Matter protesters reflects the fact that more and more people are realizing "how disgusting of an idea it is to hold people in custody, pretrial, for exercising their right to protest."

He hopes the realization about protest bails leads donors to a deeper epiphany: the idea that any kind of pretrial incarceration, for any charge, is



antithetical to the concept that defendants are innocent until proven guilty.

And while bail funds have previously seen donations and media requests spike following police killings, Mollenkof said that the current uprising is unlike any that came before it.

"The leverage we have in this moment is the kind of leverage that can break the bail system, and we will use it to do that," he said. "We will end cash bail in the state of Minnesota and, I hope, in America."

Since receiving the huge influx of cash, the MNFF has eliminated its cap on individual bail amounts for those arrested during protests. For charges unrelated to protests, the fund raised its cap on individual bail amounts from \$1,000 to \$20,000, aiming to rapidly free those with the least-complicated cases and lowest bail amounts.

During one recent spree, Mollenkof said the fund made \$92,000 in bail payments in just one hour, but he added that freeing everyone incarcerated pretrial will take time due to the fact that bail is a "logistical nightmare." Payments must be made in person, in cash, and arrangements must be made to ensure released defendants have somewhere to go and some way to get there.

"We bailed out seven people last night," Mollenkof said Wednesday, adding that the fund has bailed out more than 50 since Floyd's killing. "That volume, for us, would normally take two weeks. So seven people in one evening is a real escalation. ... The momentum is building."

Funds like the MNFF have long been at odds with the American Bail Coalition, an organization that promotes the bail bond industry. Its director, Jeffrey Clayton, told Law360 on Friday that he is concerned the MNFF may have bailed out several people charged with serious wrongdoing, including one man released on a \$75,000 bond after allegedly shooting a gun at two police officers.

"If you look at the data, they're going to have to bail out hardened criminals in order to spend the money they raised," he said. "The small bonds aren't enough to add up to \$30-plus million."

Clayton also questioned the unregulated nature of community bail funds and whether those bailed out by a charitable fund are as likely to return to court.

"It kills the incentives to return to court because nobody's on the hook. If it was a friend or relative [paying the bond], they're on the hook," he said.

Mollenkof declined to comment on any specific individuals the MNFF has bailed out but cast doubt on the attempted murder allegations made by the Minneapolis Police Department, pointing out "international demands for its dissolution."

"There is no chance we would leave someone in custody based on their claims," he said. "Furthermore, we will be bailing out people in the future that bail lobbyists like the American Bail Coalition will claim are not worthy of pretrial freedom, and we just fundamentally disagree with them about the value of the lives and time of people held in custody pretrial."

Chicago Community Bail Fund

Like many of its peer groups, including the dozens that have sprouted up since Floyd's killing, the Chicago Community Bail Fund began in response to police brutality.

Its origin incident was the police killing of DeSean Pittman, a Black 17-year old, in August 2014. During an ensuing vigil, five of his friends and family members were arrested and taken to the Cook County jail. To help free them, the family worked with what would become the CCBF's founding members to raise nearly \$30,000 over a four-month span.

"Our existence is rooted in people resisting police violence," said Sharlyn Grace, the fund's director. "All the support coming to bail funds has to be understood as support for Black Lives Matter more broadly."

In its first year, the CCBF posted more than \$300,000 to free 45 people from jail or house arrest, and last year, it managed to pay over \$550,000 to free 108 people. The group has also expanded into other advocacy activities like court watching, legislative and judicial lobbying, and referring plaintiffs for class action lawsuits.

For example, the CCBF's efforts helped pressure Cook County Chief Judge Timothy Evans to issue a general order instructing judges to set money bonds only in amounts that people can afford to pay, leading to a 1,400-person decrease in the local incarcerated population over three months.

Since May 28, the fund has paid more than \$380,000 to free more than 115 people, mostly protesters. The volume is just a fraction of those arrested during protests in Chicago because many were released without having to pay money, a development that the CCBF called "a direct consequence of our organizing efforts over the last four years."

Now the group can power even more research and lobbying, in addition to its direct bail work: On Wednesday, Grace submitted a letter and petition with 2,500-plus signatures to Cook County State's Attorney Kimberly Foxx, urging the prosecutor to stop filing new charges in cases that don't endanger specific individuals.

While grateful for the influx of new funding, Grace said she worries about "a fetishization of bail funds" obscuring the other work she considers necessary to the cause.

"It reflects a desire for immediate gratification because it's so concrete," she said. "You pay \$5,000 or \$25,000 and you secure someone's freedom and it happens right now. But in order to end police violence, we have to invest in grassroots organizations ... for years."

Brooklyn Community Bail Fund

For the past year and a half, the BCBF has focused on paying immigration bonds, helping to free nearly 500 people from [U.S. Immigration and Customs Enforcement](#) detention. The fund also provides post-relief support, helping with things like housing, food, diapers and other necessities for people facing potential deportations.

The shift to immigration bonds came after the group felt it was becoming "entrenched in a system we actually wanted to dismantle," said Zoe Adel, the BCBF's advocacy and communications manager.

"The conversation stopped being around 'how do we end pretrial incarceration?' and became about ending it partially for certain groups and letting bail funds handle the rest," she said.

Despite the fact that other groups have taken on bail for protesters, the BCBF saw a huge influx of cash in the wake of Floyd's killing. Since May 29, more than 50,000 people have collectively donated more than \$1.8 million.

To honor the donor intent, those funds won't be going to immigration bonds; Adel said the BCBF is deploying the money to other groups around the state and around the country that are bailing out protesters. She added that the group is working to re-grant the money to grassroots and Black-led organizations fighting for racial justice.

"Hopefully it's becoming clear to most people that all it takes for someone to be arrested, charged and incarcerated pretrial is for a police officer to say you did something illegal," Adel said. "This is something that Black and brown people have experienced for decades."

Nashville Community Bail Fund

Although the Nashville Community Bail Fund did not intentionally fundraise in the days following Floyd's killing, it still received a flurry of donations unlike any other it had seen before: more than \$100,000 in a few days, for an organization accustomed to a \$50,000 annual budget.

The group's manager, Rahim Buford, said the money has helped the fund pay \$40,600 to bail out 15 people, mostly protesters, since Floyd's killing. He hopes the increased donations and attention will help the NCBF grow its volunteer base and launch a court-watching program to observe and document the inequities in how bail amounts are set.

As an example, he noted that a local police officer was assigned a \$25,000 bail amount when charged with first-degree murder for shooting a Black man named Daniel Hambrick in July 2018.

"We have protesters being charged \$75,000 to be released," he said. "We've been able to negotiate that down, but it goes to show the disparities and who's favored."

For now, Buford, who served 26 years in prison on a murder charge before being released in 2016, is focused on the task at hand: After Black Lives Matter protesters held a demonstration against the city budget Tuesday, he said he was bailing people out of the local jail well past midnight.

"There is an urgency that I feel when it comes to getting people out of a cage," he said. "One hour, or two, or three in a jail cell ... it can traumatize you for life. And of the 1,090-plus people we've freed since 2016, over half of those cases were ultimately not prosecuted. Had they stayed in jail, they would've more than likely pled guilty."

--Editing by Aaron Pelc.

TOP STORY

Bail funds under scrutiny after nationwide protests

By **Matt Hoffmann** News-Press NOW | Jun 20, 2020



News-Press NOW

Jeffrey Clayton, the executive director of the American Bail Coalition, spoke with News-Press NOW this week.

By Matt Hoffmann

The decisions of bail funds, often used to help low-level offenders out of jail, are under scrutiny by the American Bail Coalition following nationwide protests over George Floyd's death.

Jeffrey Clayton, executive director of the American Bail Coalition, said some of the funds are bailing out people charged with violent crimes.

“We can’t find the bails that are nonviolent protesters that are simply, you know, peacefully protesting or even not peacefully protesting,” Clayton said. “What we’re finding is serious assault, a police officer homicide, serious arson charges are the only ones who are having to post bail.”

According to Clayton, only one state, New York, regulates bail funds.

“It’s open season right now,” he said. “And without regulation, dark money from foreign governments could come into this destabilized criminal justice system. If bail is imposed, they could just simply bail them out and have no accountability or anything like that.”

Bail funds don’t have arrest powers because they are third parties, unlike traditional bail bondsman, Clayton said.

“I think what we determined was that the narrative that the police continue to arrest people simply because they’re black, or they’re poor, is ridiculous,” he said. “The only people that are really going to jail and that are really getting bailed out are people who did something bad.”

Several bail funds operate in Missouri, including the Kansas City Community Bail Fund.

“Through the use of a revolving fund, our mission is to provide bail for people without the resources to post their own bail while awaiting trial — giving them a higher chance of a positive outcome in their case,” the fund’s mission statement reads.

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Daily Journal

California's 2-month zero-bail experiment about to end

By Malcolm MacLachlan
Daily Journal Staff Writer

“What would a state look like without bail?” was once the kind of theoretical question asked by academics. But California has had a real world test of the concept for more than two months.

The experiment is coming to an end, however. The Judicial Council voted 17-2 Wednesday to let the emergency order suspending most cash bail expire on June 20.

The policy has allowed most people arrested for misdemeanors and low-level felonies to go free without forking over cash or contracting with a bail bondsman.

The two “no” votes came from the legislative members of the council: Assemblyman Richard Bloom, D-Santa Monica, and Senate Judiciary Committee Chair Hannah-Beth Jackson, D-Santa Barbara.

The suspension of most bail was

among 11 emergency policies passed by the council on April 6 in response to the coronavirus pandemic. The change also occurred against the backdrop of a larger debate on the future of bail in the state.

There is an ongoing battle between those who want to end the use of cash bail permanently, and those who want to keep the current system. Not surprisingly, these groups have very different views of how well California's two-month experiment with zero bail has turned out.

Supporters of cash bail have tended to point out instances in which people released without bail have gone on to commit other crimes.

“We expressed serious concerns about the impact of zero bail as we felt it would result in inappropriate early release of potentially dangerous offenders and those who would continue to re-offend if not held accountable,” said California Police Chiefs Association President Eric R. Nuñez.

The council released a statement Wednesday claiming the policy kept more than 20,000 people out of crowded jails at a time when the virus was spreading fast. The dangers the virus poses to some incarcerated people was illustrated on Thursday morning, when the Department of Corrections and Rehabilitation announced the 13th and 14th Covid-19-related deaths among thousands of state prison inmates.

The Judicial Council statement also claimed “crime rates stayed at historic lows” while the zero bail policy has been in place. But numerous reports and studies have also pointed out crime started dropping steeply in March when various stay-at-home orders went into effect, weeks before the zero bail policy. For instance, the Los Angeles Police Department reported a 14% decrease in violent crime in the city during March.

The Judicial Council's statement also quoted council member Marsha G. Slough, who said individual

courts will still have the option keep the zero bail schedule.

“We urge local courts to continue to use the emergency Covid-19 bail schedule where necessary to protect the health of the community, the courts and the incarcerated,” said Slough, a justice on the 4th District Court of Appeal. “We are also asking courts to report back by June 20 on whether they plan to keep the Covid-19 emergency bail schedule, or another reduced bail schedule.”

In 2018, then-Gov. Jerry Brown signed SB 10, a bill that would have phased out the use of cash bail in California, but it is on hold pending a fall referendum.

Jeff Clayton, the executive director of the the group behind the referendum, the American Bail Coalition, said he was “pleased” by the vote.

“It is absolutely clear that the statewide zero bail schedule had an extremely negative impact on public safety in many cases throughout California, and there is absolutely no

indication that it had any impact on containment of COVID-19,” Clayton said in an email.

SB 10's author, Senate Majority Leader Bob Hertzberg, D-Van Nuys, praised the zero bail policy when it was implemented, saying it would protect not only inmates but jail guards and other law enforcement officers. His office declined to comment on Thursday. Hertzberg is scheduled to speak at a rally in Sacramento today opposing the referendum, hosted by the #EndMoneyBail Campaign.

The movement against bail has gained support from some high-profile public sector attorneys in the Bay Area. Just days after taking office in January, San Francisco District Attorney Chesa Boudin announced his prosecutors would stop seeking cash bail.

Public Defenders Manohar P. Raju in San Francisco and Brendon D. Woods in Alameda lobbied council members to vote against rescinding

the policy. Woods has linked the higher death rates of black people due to Covid-19 to his reasons for keeping the policy. In a statement released Tuesday he noted the population of Alameda's 3,489-bed Santa Rita Jail is nearly half black even though the county is 10% black.

Reached on Wednesday, he also linked bail to the worldwide protests sparked by the police killing of George Floyd in Minneapolis.

“Do Judicial Council members watch the news?” Woods said by email. “There's a nationwide uprising against systemic racism, and the council chooses this moment to give counties permission to return to the mass pre-trial incarceration of Black and Brown people. Now my only hope is that judges here in Alameda County do better and decide to continue with our local version of the emergency bail schedule.”

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Friday, June 19, 2020

News

Voters to decide on cash bail system

By Special to the Democrat

By Shaun Holkko and Steven Bryla

An initiative on the November ballot proposes removing the cash bail system in California jails and replacing it with a risk-based release and detention system.

Former California Gov. Jerry Brown signed Senate Bill 10 into law in August 2018 to establish a new pretrial process in the Golden State. The previous pretrial process allowed people that were not charged with serious felony offenses to have the right to a pretrial release with cash bail.

Individuals were given two options for posting bail. One was depositing cash or property equal in value to the set bail amount, according to the state [Legislative Analyst's Office](#). The other option was paying a nonrefundable fee, no more than 10% of bail, to a licensed bail bond agent in California.

The new process under SB 10 would replace cash bail with risk assessments. The new system would release most low-risk offenders.

A referendum for SB 10 qualified for the November 2020 ballot in California where voters will have the option to pass or deny it. Implementation of the law is on hold, pending the referendum.

James Clark, who owns a [criminal defense practice in Placerville](#), said he supports SB 10 and would like to see it approved because it treats people equally.

“(SB 10) is a good thing,” Clark said. “The bail system prejudices the poor and allows people (with) the means to avoid pre-trial detention ... (But) for the folks that can’t afford it, (they) stay in jail.”

Clark said that forcing those who cannot afford bail to remain in jail often puts them out of work, causing additional stress.

“For low-grade felonies, I think it’s a good thing for people so they can work when they get released,” Clark said. “It does nobody good just sitting in jail and worrying.”

If passed, SB 10 would have different criteria to determine how a person would be held depending on the crime. A [misdemeanor](#) charge under SB 10 would result in a defendant being released within 12 hours of booking.

There are [10 primary exclusions](#) of misdemeanor or felony charges where those arrested would be denied release and remain in jail. Exemptions include driving under the influence (DUI) with a blood-alcohol level of .20, a third DUI within a 10-year span or a violation of a restraining order.

Individuals charged with a felony are separated into three groups based on risk level. High-risk individuals are detained until court review. Medium risk defendants are released under supervision or “least restrictive conditions.” Low-risk individuals are released on their own recognizance unless they meet one of the 10 exemptions or fall under four felony arrest exclusions. Medium-risk defendant release is also subject to exclusions.

Jeff Clayton, executive director of the [American Bail Coalition](#), does not want to see SB 10 pass on the November ballot, in part due to the different criteria levels for release the bill presents.

“In Senate Bill 10, you have three categories: high risk, you go to jail, throw away the key,” Clayton said. “Medium risk, we say, OK, we’re going to supervise you by (a) pretrial services agency. And low risk, you get to go home and nobody bothers you. All that is going to be driven by the pretrial risk assessment tool that’s been launched.”

Clayton said the assessment tool would be unfair and ineffective. He also said if SB 10 is passed, it would eliminate the commercial bail industry in California.

“If you hire a bail bondsman to get you out of jail and they post a financial guarantee, we’re ultimately liable for those guarantees,” Clayton said.

Emeryville Mayor John Bauters, who is also the budget advocacy director of [Californians for Safety and Justice](#) and has been a lawyer for 15 years, said the current cash bail system isn’t working.

“The No. 1 problem is that it does not actually provide for public safety. It does not promote safety. It does not deliver safety as it claims,” Bauters said. “Just think about it for a second; The appropriateness of somebody being able to pay, who’s wealthy, to be released pretrial for a serious crime but has the ability to do so simply because they have the assets and resources and are connected to wealth.”

Bauters is in favor of SB 10 as it would eliminate a cash bail system that he said favors the rich and has proven in the past to be flawed.

“[Tiffany Li](#) was charged with murder in San Francisco several years ago and she and her family posted \$35 million in bail. She went home even though she was charged with the murder of her own husband,” Bauters said. “There are a lot of people who, despite being charged with some serious things, get to be released.”

A preview of what’s to come for El Dorado County jails may have occurred Monday, April 6, when the [California Judicial Council](#) enacted emergency orders in response to the COVID-19 pandemic, freeing many low-level criminals in jails across the state.

The order led to seven inmates being released April 13 from the El Dorado County Jail, according to Sheriff John D’Agostini.

“I want everyone to know how extremely frustrated I am with this order,” [D’Agostini said in a video](#) posted to the Sheriff’s Office’s Facebook page. “However there is nothing legally and or constitutionally that I can do to ignore this order.”

D’Agostini went on to explain how his staff will proceed differently to determine who should be jailed.

“Moving forward, our deputies will be using discretion in the field to determine who we will be booking and who will be released on citation,” D’Agostini said.

Californians will vote on the SB 10 referendum in November.

This story is part of a collaborative project between the Mountain Democrat and seniors in the journalism program at California State University, Sacramento. For more information about the program visit facebook.com/sacstatejournalism.

KQED News

California Voters Asked to Weigh Ballot Measures That Could Reverse Hard-Won Justice Reforms

Marisa Lagos

July 2, 2020



Demonstrators fill Broadway near the Oakland Police Headquarters on May 29, 2020 during a protest over the Minneapolis police killing of George Floyd. (Beth LaBerge/KQED)

As the United States grapples with a national reckoning over race, policing and criminal justice, California voters will be asked this fall to roll back a handful of criminal justice reforms enacted over the past decade.

Those reforms — some approved by lawmakers, others by voters — have helped [keep thousands of people out of jails and prisons](#) and allowed the state to redirect millions of dollars into [victims services and rehabilitation programs](#).

[One of the ballot measures](#) slated for November, Proposition 20, would [reverse aspects of those reforms](#) by making it harder for some people to parole from state prison, and easier for others to be sent to prison or jail.

The [other initiative](#), Proposition 25, takes aim at a [2018 law to eliminate cash bail](#) in California. That law, passed by the Legislature, never took effect after the bail industry [gathered enough signatures to put the question before voters](#). They are hoping the electorate overturns the law and keeps cash bail intact.

But supporters of reform — who oppose both ballot measures — believe that in this moment, when conversations about race and policing and systemic racism have gripped the nation, public sentiment is on their side.

"This feels like a real moment with staying power. ... the breadth and the depth of the outrage and the determination feels like it has enough momentum and staying power that it's unlikely to dissipate by November," said political consultant Dan Newman, who helped push many of the earlier reforms and is fighting against one of the ballot measures to overturn them.

"I think people are looking for ways to channel what they know and believe into real action and real reform and make a difference," he added. "So it's just sort of a matter of ensuring that they know: If you care about mass incarceration, if you care about racial injustice, here are some ways that you can really weigh in with power and make a difference."

Not surprisingly, political consultants on the other side of the debate disagree. Richard Temple is running the campaign that would keep more people in prison by including crimes like rape of an unconscious person or domestic violence on the state list of violent offenses.

"These things are violent, and the public knows that. And we as a campaign plan to stay focused on that," he said.

Temple insisted that the ballot measure "doesn't have anything to do with the other issues out there being debated," such as police brutality or racial inequality.

"That's got to be dealt with by elected officials and the nation as a whole," Temple said.

But both sides will have the challenge of explaining complicated issues to voters.

Bail Reform

Critics of bail have long said the system discriminates against people who can't afford to put up the cash to get out jail. But when Oakland Assemblyman Rob Bonta first introduced a bill at the end of 2016 aimed at simply limiting the use of cash bail, there was pushback — even in California's Democrat-dominated Capitol.

"There was a phrase that was going around called 'Bonta's bill is a hug a thug.' Not a lot of nuance there," he said. "[And] a lot of racism."

Still, Bonta and another Democrat, state Sen. Bob Hertzberg of Van Nuys, joined forces — and nearly two years later, succeeded in convincing California lawmakers and the governor, then Jerry Brown, to end cash bail in the state.

Now, in 2020, as voters are asked by the bail industry to overturn that law, bail has become a key focal point in conversations about inequality within America's criminal justice system.

Since protests sparked by George Floyd's killing in Minneapolis began in late May, an estimated 4 million people have poured more than \$75 million into community bail funds. Those organizations offer an alternative to massive loans from bail bonds companies.

Pilar Weiss, director of the Community Justice Exchange, a group that helps support that network of community bail funds, said the bail fund donations are proving to be an entry point for people to get more educated about mass incarceration.

"It's a first step that somebody donated to a community bail fund. That was the first time they realized that people in their community were still, often, held in a cage for an indefinite amount of time because of money," Weiss said. "That connects also to the conversation about how our resources are being spent in their community, on police rather than on libraries, schools and safety centers. I think there's a lot of potential there."

But she and other progressive groups aren't actually that supportive of the details of Bonta's bail measure, saying it could result in more people being kept in jail before their trial, because it leaves a lot of discretion up to judges.

That's a message that the bail industry and other supporters of retaining bail plan to focus on, said Mike Gatto, a former state Assemblyman who is consulting for the campaign to overturn bail reform.

"I think a lot of people participating in recent bail drives [know that] if you, or a loved one, or someone you care about is in jail and they've been arrested, bail is an option for that person to get out," he said.

"The question that we have to talk about as a society is whether removing that option for families and for people who are behind bars is the right one?" Gatto said.

Reversing Reforms

Bail isn't the only criminal justice question before voters this November. Some police groups, district attorneys and victims groups are pushing the other initiative, which would reverse aspects of three laws — two enacted by voters — aimed at both reducing the number of people in crowded prisons and jails, and the amount of money the state spends locking people up.

The ballot measure would make it easier to charge someone with felony theft, and easier to send someone back to jail for violating their probation. It would also make it harder for many inmates to earn parole from state prison by expanding the list of crimes considered violent under state law.

Temple, the campaign consultant working to pass that measure, said he believes voters will agree that some people should stay locked up.

"Our polling shows that our message is stronger than the opponent's argument against us, because what we're trying to do, it is not complicated. It's simple," he said. "These laws are not classified as violent. And we're going to continue to press on that."

But opponents of the measure said they will seize on the national conversation about racial injustice to highlight the vast racial disparities in California's criminal justice system.

'We know empirically that the approach that they are backing is not how you keep communities safe. You don't warehouse huge numbers of people, disproportionately Black and Brown people, behind bars. It's a failed approach and has proven to be wasteful, ineffective, unjust and racist.'

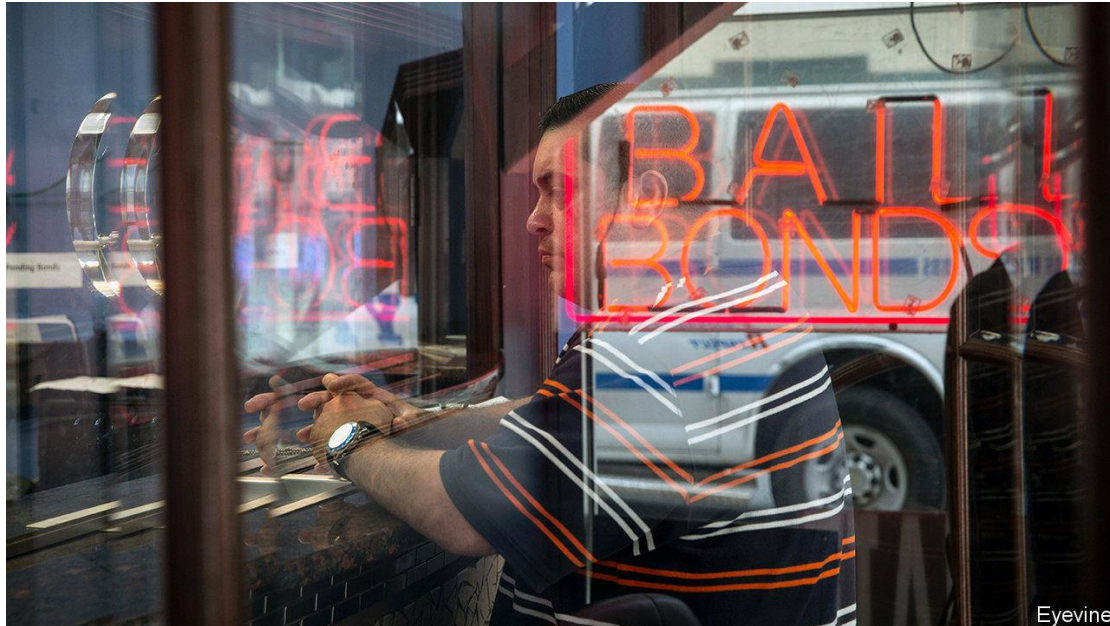
—Dan Newman, political consultant

For example: A [recent report](#) by a group that advocates for less incarceration found if voters pass the ballot measure, it would disproportionately harm communities of color, drive up prison and jail populations and increase public spending on law enforcement and incarceration by hundreds of millions of dollars a year.

Newman, the consultant opposing the measure, said he believes the calculation for voters has changed. Five years ago, he said, his side would have focused solely on public safety when making the case for reforms. Now, he says, it will also be a campaign about racial justice.

"We know empirically that the approach that they are backing is not how you keep communities safe. You don't warehouse huge numbers of people, disproportionately Black and Brown people, behind bars. It's a failed approach and has proven to be wasteful, ineffective, unjust and racist," he said.

Thursday, July 9, 2020



United States

Jul 9th 2020 edition >

Reform squared

The challenges of reducing America's jail population

Cash bail is unpopular. But the replacements are not necessarily better

It might have been the most polite bank robbery in New York's history. At half past five in the afternoon on January 10th a man in a Chicago Bulls baseball cap walked into a Chase Bank branch in Brooklyn and handed a note to the teller. "This is a robbery," the message said, in handwritten red ink. "Big bills only." He walked out with \$1,000. The man accused of the heist is Gerod Woodberry. Less than four hours before the Brooklyn incident, Mr Woodberry had been released from police custody after being charged with similar offences. "I can't believe they let me out," he told a detective.

His release was thanks to New York's new bail-reform law, effective since January 1st, which eliminated pretrial detention for misdemeanours and non-violent offences. Critics of the reform jumped on Mr Woodberry's case. In April the state legislature amended the new law to increase the number of situations in which judges can impose cash bail, effective from July 1st. The Centre for Court Innovation, a think-tank, estimates that this will increase New York's pretrial jail population by 16%.

Before the reform was reformed, New York had been the first state in the country to end pretrial detention for such a swathe of charges, enough to account for 90% of arrests. Bail-reform advocates say that keeping unconvicted people detained before trial violates the presumption of innocence. The money-bail system, in which defendants pay cash as a

guarantee that they will show up in court, means that only those with spare dollars can wait for their trial at home. The poor must either turn to the \$2.3bn commercial-bondsmen industry—companies, found only in America or the Philippines, which bail out defendants for a fee—or wait in pretrial detention. In 2016 two-thirds of inmates in local jails were defendants awaiting trial.

But if money bail is reformed, what replaces it? California abolished it in 2018, replacing it with risk assessments. But the new law pleased few people. It replaces the former system with “an overly broad presumption of preventative detention”, says the American Civil Liberties Union. The American Bail Coalition has sponsored a \$3.7m campaign to repeal it. Risk-assessment tools “penalise people based on what they might do in the future,” says Jeff Clayton of the bail-industry group. The law will be put to a referendum in November.

Debates about bail reform have forced people to think about what bail is really for, says Taryn Merkl of the Brennan Centre, a think-tank. Posting bail is no more of a guarantee than other incentives that someone will show up in court. The Bronx Freedom Fund is one of several charities that bail out poor defendants. Between 2013 and 2014 98% of the organisation’s clients showed up for their court dates, despite the lack of a personal financial incentive. Such data have pushed the case for abolishing cash bail, says David Feige, the Fund’s chairman. So public safety is also invoked—though, among the people awaiting trial in local jails, 68% are accused of nonviolent offences.

This is where risk assessments come in. Many states look to New Jersey as the example of what abolishing cash bail would look like. Money bail was severely restricted there in 2017. Instead, judges use an algorithm to determine how dangerous or likely to flee a person is. It is far from perfect. Although New Jersey has reduced the overall jail population, the algorithms used to determine who gets bailed and who does not are said to entrench the kind of racial discrimination that getting rid of cash bail was supposed to solve.

In both 2012 and 2018, 54% of inmates were black. One of the risk factors used in the New Jersey algorithm is a person’s criminal record. But in 2013 a black person in New Jersey was three times more likely than a white person to be arrested for marijuana possession, despite a similar rate of use among the two groups. The algorithm also factors in pending charges that have yet to result in a conviction.

“There is no doubt that risk assessments are biased,” says Megan Stevenson of the University of Virginia. “Anything that has data from a biased world will have a biased output.” But this means that “there is no way to test a risk assessment tool for fairness”, because any measures, such as if a bailed person is rearrested, can also be affected by racial bias in the justice system.

The challenge of bail reform is that “we haven’t been able to establish a baseline of best practice”, says Rashawn Ray of the Brookings Institution. But many jurisdictions are moving away from a cash-for-freedom system. Washington, dc has gone furthest. The risk-assessment tool it uses is opaque, but it releases 94% of defendants before trial. “There is no perfect alternative” to cash bail, observes Marie Ndiaye of the Legal Aid Society, a law firm. Many would like to see pretrial detention eliminated for all but a tiny minority of dangerous defendants. Still, despite the rollback of the New York reforms, Mr Feige of the Bronx Freedom Fund thinks things are moving in the right direction. He is closing his organisation to focus on national bail-reform efforts. “We are realising”, he says, “the dream of our own irrelevance.”



MONEY MAKING SENSE

Warning! Is the current bail system affecting justice?

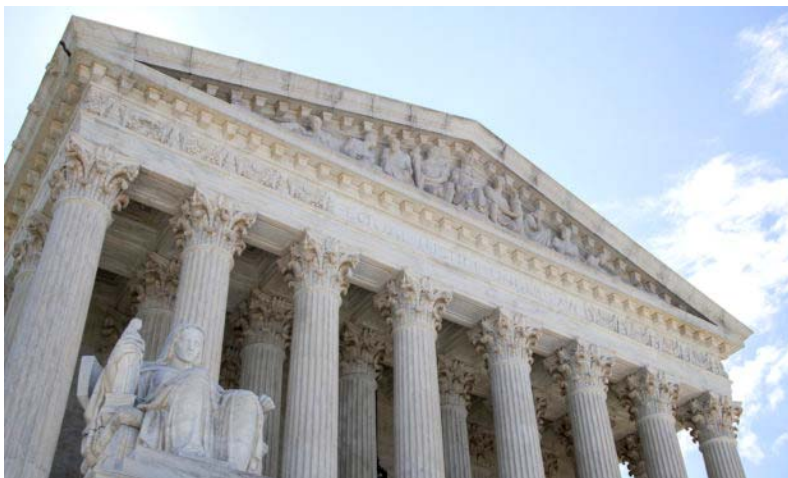
Were you recently arrested and had to post bail? Jeff Clayton, the Executive Director of the American Bail Coalition explains what happens to your money. And why is reform so desperately needed to the system? You can follow this show on Instagram and on Facebook. And to see what Heather does when she's not talking money, go to her personal Twitter page. Be sure to email Heather your questions and request topics you'd like her to cover here.

Published: Wednesday, August 05, 2020 | Runtime: 17:09



American Bail Coalition director: It's time for system reform

BY CAMI MONDEAUX
AUGUST 11, 2020 AT 4:26 PM



FILE - This June 30, 2020, file photo shows the U.S. Supreme Court in Washington.
(AP Photo/Manuel Balce Ceneta, File)

The American bail system has been undergoing reform over the last decade in an effort to eliminate bail for low-level cases — maintaining the statute for criminal cases.

However, mass protests over racial justice temporarily upended those efforts. Jeff Clayton, executive director of the American Bail Coalition, said the system is now threatened with destabilization.

“The system has been, and still is, stable pre-this movement,” Clayton told Heather Kelly on the [Money Making Sense show](#). “Now it’s being destabilized.”

Bail system reform

Before a protest movement swept across the country — beginning in response to George Floyd’s death by a police officer — Clayton said people like him hoped to reform the bail system to ensure due process.

“In other words, somebody had a bail set that was considered excessive but they didn’t realize they have to file a motion to have it reduced,” he said. “Or judges just didn’t take it seriously or have any hearings in a timely fashion.”

Despite the efforts underway, Clayton said the “reforms were minimal compared to the functioning of the system. It was holding people accountable.”

Reforming the system meant looking more closely at cases that held people in jail because they can’t post bail — something that disproportionately affects low-income people or those who couldn’t afford a personal attorney.

Leveling the playing field

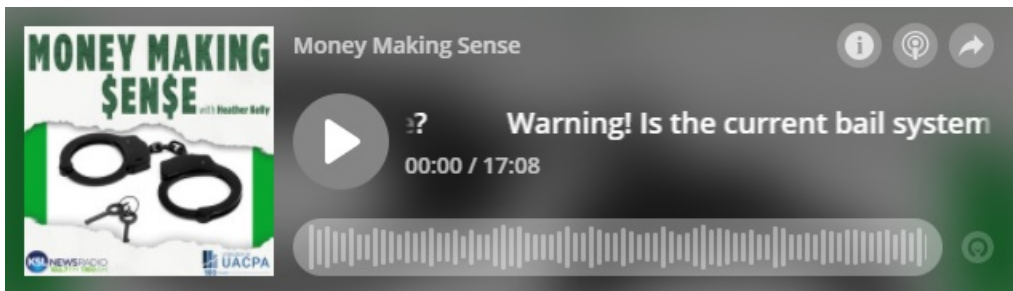
Clayton argued the bail system effects apply to everyone. That includes those wrongfully charged or those who don’t know they can request a lower bail.

However, he said authorities don’t collect data on the demographics — like race or class — of those who don’t get their bail reduced. He said banking information, flight risk, prior crimes, severity of charges and other factors more frequently influence those decisions.

Without this data, Clayton said it helps make sure the bail system is “applied across the board.”

“Which just points out,” he said, “we need due process so people can exercise their rights in all cases.”

Hear the full interview with Jeff Clayton and KSL NewsRadio’s Heather Kelly here:



Daily Journal

Criminal
California Supreme Court
Aug. 4, 2020

Despite Flaws, Some Continue to Push for Bail Algorithm

When the system erred, it consistently showed that Black defendants were predicted to be higher risk, while white defendants were similarly predicted to be lower risk -- despite the fact that neither was actually true. It was later discovered that Los Angeles County was using the same COMPAS system to inform bail decisions.



JEFFREY J. CLAYTON
Executive Director, American Bail Coalition

As the new millennium began, the power of human innovation, manifested largely through advances in science and technology, seemed endless. Solving all of the world's problems seemed not only possible, but probable. Through technology we would find a cure for various terminal diseases, eliminate the use of fossil fuels, eradicate poverty and fix the many other ills that plague our society.

Advances over the last 50 years have also found their way into social science. Today, massive computing power allows us to run endless correlations between any number of variables collected about human subjects. With pinpoint scientific accuracy, it can purportedly predict the behavior of the criminal mind or that of a bail jumping scofflaw.

One of those grand advances in social science technology was a computer algorithm that, it was posited, could tell judges the risk of persons arrested to commit new crimes or whether they would fail to appear in court as required.

Called pretrial risk assessment or public safety assessment tools, they were intended to help judges identify individuals considered risky in order to hammer them with higher bails and conditions of release, such as house arrest, GPS monitoring or drug screening. Many observers said use of the algorithms would break the endless cycle of mass incarceration, which, as we will see, turned out to be the complete opposite of what actually happened.

Against this backdrop, the Conference of Chief Justices, a prominent national group comprised of 58 chief justices throughout the U.S. and its territories, adopted a policy resolution in 2015, that advocated for "evidence-based assessment of risk in setting pretrial release conditions." The organization also adopted a second resolution entitled, "Supporting Federal Efforts to Promote Pretrial Risk Assessment."

CCJ also endorsed a resolution from the Conference of State Court Administrators, which read in relevant part, “The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen.”

CCJ's position on a national policy to push pretrial risk assessment algorithms onto the justice system was demonstrated in the decision by California Supreme Court Chief Justice Tani G. Cantil-Sakauye to support California Senate Bill 10. If passed, the law would embed the pretrial risk assessment process deep into the state's criminal justice system. While lip service might subsequently be paid to judicial discretion, it is clear that the results of the tool would significantly drive outcomes for all defendants.

Cracks in the system first emerged in 2016 when ProPublica published its series, "Machine Bias." Its research determined that the rate of error among racial groups as predicted by the risk assessment algorithm used by the COMPAS system, was out of balance. When the system erred, it consistently showed that Black defendants were predicted to be higher risk, while white defendants were similarly predicted to be lower risk -- despite the fact that neither was actually true. It was later discovered that Los Angeles County was using the same COMPAS system to inform bail decisions.

The bottom really fell out when the Leadership Conference on Civil Rights, which includes the ACLU, NAACP and many other national civil rights groups, issued a statement in 2018 challenging the algorithm-based system of pretrial justice. It also called into question its inherent lack of transparency, as well as the mounting evidence that racial bias was creeping into the system.

Despite the nearly complete withdrawal of support for use of the algorithm by those who had previously been its greatest advocates, the California legislature and Chief Justice Cantil-Sakauye continued to push for its implementation. Together, they mounted an effort to pass California Senate Bill 10 in 2018, which required that all defendants be assessed by a yet-to-be-developed pretrial risk assessment tool -- while mandating statewide funding to pay for its hefty price tag. Sponsors of the legislation noted in a press release, “Chief Justice Cantil-Sakauye's unprecedented commitment to see these reforms to the finish line” was critical in gaining passage of the bill.

A group of 27 prominent academics from Harvard, MIT, Princeton, UC Berkeley and Columbia addressed a letter in July 2019 to California's Judicial Council, chief justice and sponsors of the legislation, warning of the fatal flaws of pretrial risk assessments.

In urging the state to turn away from the use of such tools, they noted the reliance of risk assessment tools by judges, despite their "serious methodological flaws that undermine their accuracy and effectiveness." It went on to say that their use could not increase the probability of better pretrial outcomes, much less guarantee them.

It also emphasized that risk assessment's inherent technical flaws could not be readily resolved in the implementation phase, as they were hard-baked into its very theoretical foundation. It concluded by admonishing, "Other reforms must be considered to improve pretrial justice in California."

Attempts by this office to contact the Conference of Chief Justices asking that they revisit their prevailing policies in light of the developing revelations regarding pretrial risk assessment tools have been met by silence. What's more, CCJ's policy remains in full effect and force, while its members continue to push for pretrial risk assessments in nearly every state across the country. Particularly outspoken on the issue have been Chief Justice Maureen O'Connor of Ohio (past chair of CCJ), along with the chief justices of California, Colorado, Kentucky, New Jersey and Texas.

Advancements in technology have brought countless improvements to society. Unfortunately, risk assessment algorithms are not the panacea that criminal justice reformers would have us believe. Despite numerous warnings that the costly tools may increase racial bias and solid evidence that they simply don't work, the Conference of Chief Justices and our states' chief justices seem hellbent on an agenda that no one else seems to want.

Legislators and local officials across the country must stand up and resist their attempts to hijack our criminal justice system by forcing us into a system of algorithmic justice. What's at stake is a move toward an honest, effective and transparent methodology that protects both persons accused of crimes and the public, who deserve better.

#354443

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Conference of Chief Justices' Indefensible Policy on Pretrial Risk Assessment



Jeffrey J. Clayton POSTED ON AUGUST 13, 2020



For all the talk in this nation about bail reform the past few years, the move to the use of risk assessment as a one-size-fits-all solution has been touted and embraced as the cure to the supposed ills of cash bail. At first finding favor with advocacy groups, its reach has extended to key decision makers, finally reaching the highest levels of our court system.

Five years ago, the Conference of Chief Justices (CCJ) formally adopted a policy supporting the nationwide use of evidence-based pretrial risk assessment. They also endorsed a policy of the Conference of State Court Administrators, arguing that use of risk assessment tools to make judicial decisions to release or not based on its results, “fits within a well-functioning case management regimen.”

CCJ’s statement is disturbingly sweeping because it includes the use of a pretrial risk assessment algorithm not only to set a bail, but also to inform a

decision of preventative detention where allowed. Of the latter, it calls for its use under any attendant conditions, which includes liberty-restricting conditions including GPS monitoring, drug screening, check-ins, etc.

It is important to keep in mind that “attendant conditions” are often paid by defendants themselves. In effect, these individuals must pay for their own personal criminal dragnet.

Lawyers who have not practiced criminal law in a major urban jurisdiction, may not be familiar with pretrial risk assessment tools, which are sold to score the risk of a defendant of no-showing for court or being rearrested for a new crime. Those that do, know how they’ve been forced to hone their arguments based on the binary manner in which the tool has dehumanized their client, herded him or her into a group based on data, and ultimately, seared a criminal scarlet letter number onto their forehead.

When the score is favorable to one’s client, attorneys vociferously argue that the tool is scientific. When it is unfavorable, suggesting they will not show up to court or will commit a new crime, counselors will claim it is not scientific and is merely one instrument in the toolbox. These premises must surely be behind a favorite legal colloquialism, “Everyone loves judicial discretion...until they lose.”

As it turns out, risk assessments are not scientific and likely may magnify or at least cement existing bias against protected classes within the criminal justice system.

When it was recently suggested to a Spokane, Washington judge that risk assessments were only 66 percent accurate, the defensive response was that the Public Safety Assessment tool built by the Arnold Foundation was actually 72 percent accurate and “more useful in setting bail than flipping a coin.” Notwithstanding that the statement did not exactly inspire confidence, could the term “predictive” be used in any other field of science when it is wrong 28 percent of the time? How could such error-riddled labeling even be called justice?

This is not an isolated view. Over the past two years, civil rights and digital technology groups, along with numerous prominent academics from across the nation have come out in opposition to the use of these tools. This includes the national ACLU and NAACP; Google, IBM, Apple and Amazon; and researchers from the nation’s top universities, including Harvard and Princeton.

One of the central arguments against the use of risk assessment tools is that they may increase racial bias. The standard response from advocates, including the Arnold Foundation, is that the tools do not make existing racial bias worse, and, in any event, judges can always simply ignore the results, despite the fact that they are sold as scientifically validated. Conveniently forgotten in this claim, however, is the original promise made by John Arnold, as he money-bailed the criminal justice system, building a public

safety risk assessment, specifically designed to reduce racial bias and increase objectivity. In fact, the Pretrial Justice Institute — which has now reversed course 180 degrees and opposes pretrial risk assessment — in 2017, deemed both the Arnold Foundation and Virginia’s Pretrial Assessment tools as race neutral.

Evidence against risk assessment tools has continued to mount. Peer-reviewed research by Megan Stevenson of the University of Virginia School of Law debunked the Arnold tool’s performance in Kentucky, which years earlier had been heralded as a success. Results from other studies are nearly identical to one another, finding that the tools do not generally make a given situation better and often make it worse.

Last year, a study of the Virginia Pretrial Risk Assessment tool, used in Palm Beach County, Florida, found that it was race and gender-biased. Conducted by Florida State University in 2019, it determined that its risk levels were “not similarly indicative of pretrial risk for defendants of color and whites or for female and male defendants.” It also concluded that “defendants of color are being assessed as higher risk,” despite the fact that their risk of reoffending was low to being with and consistent with then-existing pretrial risk assessments.

Meanwhile, Mesa County, Colorado, doubled its jail population after initiating bail reform, which included the use of the Colorado Pretrial Assessment Tool, begun roughly a decade ago despite flat population growth.

Despite all of this, the Conference of Chief Justices — our nation’s highest judges — are moving forward with a continuing effort to force every jurisdiction to use pretrial risk assessments on all criminal defendants. Efforts from my office, through formal letters sent on behalf of the American Bail Coalition, urging CCJ to rescind and revisit this destructive policy, were met with no response. In 2018, we wrote, “The damage that the Conference of Chief Justice’s policy [in favor of pretrial risk assessment] has done to the rule of law has been immeasurable. It has shaken confidence in the independence of the judiciary and politicized the judicial branch.”

A second letter was sent from my office to the Conference of Chief Justices in 2020, following the landmark joint statement by 27 prominent academics from Harvard, Princeton, MIT, Columbia, NYU and UC Berkeley, stating that, in their professional opinion, pretrial risk assessments were fatally flawed and beyond repair. Again, CCJ did not even acknowledge receipt of the communication.

Despite these efforts and mountains of evidence piling up against risk assessment tools, the policies of the Conference of Chief Justices remains in force and is still being used by those pushing for their use. This includes the chief justices of Colorado, Montana, Ohio, Utah and Texas, who have used their judicial power in recent years to advocate for pretrial risk assessments. As advocacy groups continue to call into question their increasingly dubious validity, its proponents have still been able to counter with the support of the

Conference of Chief Justices, which remains a powerful force in favor of these pretrial algorithmic tools.

Let there be no doubt, the public trial on pretrial risk assessments is over. The jury has come back with a verdict and declared that it is against the policies of the Conference of Chief Justices, which do not provide for equal justice under law. Ironically, CCJ was responsible for their default in the debate — a finding they themselves would never overturn on appeal.



AUTHOR

Jeffrey J. Clayton

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.



NEWS > **COVERING COLORADO**

Group calls for courts for end of pretrial tool as study finds racial disparities



By: **Andy Koen**

Posted at 9:00 PM, Aug 27, 2020 and last updated 8:33 PM, Aug 27, 2020

COLORADO SPRINGS, Colorado — State lawmakers created the Colorado Pretrial Assessment Tool (CPAT) in 2012 to remove racial bias from decisions about bail and pretrial release from custody. But a new study suggests the opposite could be happening in courtrooms that use it.

Researchers from the University of Northern Colorado released the results of a [two-year study](#) of the CPAT last month. The authors used data from seven counties where the CPAT is commonly used, which includes Pueblo County.

The results were statistically similar across racial categories. However, Black and Hispanic criminal defendants received CPAT scores that, on average, were one point higher than White defendants.

Jeff Clayton, executive director for the American Bail Coalition, said this process is harming minority defendants.

"They are being predicted higher risk than they actually are," Clayton said. "Are they getting higher bails? Yes. Are they staying in jail when they should get out? Yes. Are they facing pretrial supervision and ankle monitors and all this sort of thing, drug testing, at a higher rate in that group? The answer is yes, they are and they have been for the last decade."

The CPAT questionnaire creates a scoring system that aims to predict the level of risk that a defendant will either miss court or commit additional crimes after their release. The higher the points on the questionnaire, the higher the risk. Clayton believes counties should discontinue using the CPAT given the findings.

"Well, I think the Crime Commission needs to call on the counties to stop using the tool. They've got to stop it right now, you can't do any more damage," Clayton said. "I'm all for reforming Colorado's bail system, we've come to the table on several pieces of legislation. It needs it, but this just isn't the answer and we need to put the brakes on."

When it comes to predicting outcomes, the study found that the CPAT tended to do better than not using the tool at all. The authors also made a statistical comparison after removing some of the questions from the current questionnaire. They called the modified version the CPAT-R and recommend that courts use that version instead.

Perspectives

Pretrial Risk Assessment Is Biased And Indefensible

By **Jeffrey Clayton** | August 30, 2020, 8:02 PM EDT

The Conference of Chief Justices, an organization of the highest-ranking judges and justices in the nation, sits at the crux of a major fight that looms regarding the continuing use of pretrial risk assessment tools in our criminal justice system. The organization's stated policy supporting its use is perplexing and has become increasingly difficult to defend.



Jeff Clayton

Evidence is mounting that these algorithms actually harm defendants, even as chief justices in more than 20 states aggressively advocate for their adoption. Many county jurisdictions in nearly every state already utilize risk assessment in some form or another. On the federal level, it has been nearly fully implemented in every district across the country.

In the early 2010s, the group adopted a policy in support of the use of algorithms that were designed to make decisions as to the release or detention of defendants. They also functioned to determine appropriate bail and conditions of release, which included supervision by pretrial service agencies or private entities.

These computational factors have had a huge presence, telling police where to go, prosecutors when to divert, and judges how to sentence defendants and set bail and release conditions. They have also directed parole and probation officers on how to supervise defendants and when to grant early termination.

At the time, it was believed that the algorithms would reduce racial and other bias by making the system more objective, in addition to significantly reducing generational mass incarceration. According to the Conference of Chief Justices, the goal was to support "evidence-based risk assessment" in all bail decisions throughout the United States.

However, by the midpoint of the decade, algorithms began to face greater scrutiny when it became apparent that they were based on factors beyond the control of defendants, but for which these individuals were facing severe consequences.

Former U.S. Attorney General Eric Holder was the first to raise alarm, questioning the specific use of demographic factors that correlated with race and poverty. Holder was concerned that certain characteristics of a defendant, such as their education level, socioeconomic background or even the neighborhood from which they were raised might "exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and in our society."

Some algorithms register scores for things like whether one owns or rents their housing, if one has a home phone, or the length of time one has been living at an address. Others consider prior mental health treatment, or rehabilitation for alcohol or substance use disorders. This is problematic because of the possibility it violates the Americans with Disabilities Act and other state companion statutes.

Taken to its extreme, one possible methodology would simply involve taking a ZIP code map of an area where a crime has taken place, then notating all people from that area as "more risky" compared to those residing outside of that area. Outrageous as it might sound, this is exactly how the algorithms work — determining if people in one particular area are more at risk of failing to appear in court or committing a new crime, in comparison to the baseline.

Holder's concern was just that. The algorithms in a sub rosa fashion provide a technological smoke screen in lieu of applying objective factors. They label all people who are from high-crime, segregated neighborhoods as being at higher risk of failing to appear in court or committing a new crime. His concerns were real and well-founded.

A huge wave of interest in algorithms was triggered in 2016 when ProPublica offered criticism of a much-used risk assessment tool called the Correctional Offender Management Profiling for Alternative Sanctions. The report called into question the very fairness the tool was purported to deliver, and it was later discovered that the same tool was in use in Los Angeles County.

Academia took note and initiated a second wave of studies. The conclusions almost universally criticized the algorithms from many perspectives, declaring them ineffectual, biased, lacking transparency and harmful to due process rights.

On the heels of that development, interest groups spanning the political spectrum called for transparency of the algorithms. As evidence mounted against the tools, they later went further with their demands, ultimately calling for an end to the use of pretrial risk assessment altogether.

The Pretrial Justice Institute was among the many groups that had previously supported the algorithms. The organization had long focused policy solutions solely through the lens of racial bias, but was prompted to publicly condemn its previous support of risk assessments earlier this year when the facts could no longer be denied.

Risk assessments were once heavily promoted as the singular solution to replace money bail. Mounting evidence to the contrary aside, this old mantra has been difficult for proponents to discard.

California's system, which will be going before voters in November, is among those for which the results of an algorithm drive all decision points down the line, i.e., low-risk defendants get out of jail free, medium-risk defendants get out with supervision by a local entity, and high-risk individuals are left to sit in

jail pending trial. Senate Bill 10 would create a no-money bail system similar to the federal system in the state courts, complete with risk assessment and preventative detention. If passed, the bill would not affect federal courts in California.

In light of the heavy criticism of racial bias, defenders of risk assessments have pivoted to a new point: Judges can simply ignore them at their discretion. They have also invoked the mantra that judges, not the algorithm, make the decision.

However, this position flies directly in the face of the proponents' argumentum ad verecundiam. It was the fact that algorithms were evidence-based and scientifically validated that made them worth considering in the first place. Theoretically, it was the promise of science, not judicial discretion, that made the system unprejudiced.

If a judge may simply regard or disregard at their discretion, then an algorithm ceases to be scientific. In other words, advocates cannot have it both ways. To admit, for example, as the Colorado Commission on Criminal and Juvenile Justice just did, that risk assessment should be a discretionary consideration when available, is to concede they are not scientific. It is also an admission, beyond doubt, that risk assessments will never be capable of replacing money bail.

For the last three years, my organization has cautioned the Conference of Chief Justices about continuing to use the power of the judiciary to advocate for these policies within legislative and policymaking forums. Recently, we sent another letter urging that the group abandon its official position and revisit it immediately, since risk assessments continue to be used actively by chief justices and advocates in an estimated 20-plus states.

We received just one response to these concerns, an email from Chief Justice Maureen O'Connor of Ohio, pointing out a typographical error and nothing more. As it pertains to merits, the Conference of Chief Justices has not defended its policies, nor answered any charges that its position is misplaced or misinformed. It has become clear that as an entity, it is entrenched on this issue.

While the Conference of Chief Justices has continued to wager that "evidence-based risk assessment" will win the day, this no longer appears to be an accurate forecast of the ultimate outcome. For the sake of truth and justice, advocates must renew pressure on the organization, and the judiciary in general, to remove themselves from the risk assessment debate entirely, be it for pretrial or any other aspect of the criminal justice system.

Risk assessment should be treated as scientific evidence. Accordingly, opposing parties must have the ability to challenge the results thereof. Most would have a difficult time believing that any instrument based on group data, with a predictive accuracy rate ranging from 66% to 72% and which does not purport to predict human behavior directly, would meet these criteria.

The Conference of Chief Justices has adopted a policy that has led to the wholesale use of these risk assessment tools, which is likely increasing incarceration. But despite the credibility that is associated historically with the group, its cachet no longer appears to be convincing advocates of criminal justice reform.

[Jeffrey J. Clayton](#) is the executive director of the American Bail Coalition.

"Perspectives" is a regular feature written by guest authors on access to justice issues. To pitch article ideas, email expertanalysis@law360.com.

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WASHINGTON **Examiner**

Kamala Harris pushed bail fund that helped murder and rape suspects get out of jail while awaiting trial

by Kerry Picket, Senior Campaign Reporter | September 01, 2020 10:38 AM

A charitable bail organization talked up by [Kamala Harris](#) is drawing scrutiny amid increased rioting and violence in Kenosha, Wisconsin, and Portland, Oregon.

In addition to Harris, Joe Biden's running mate on the Democratic ticket and a California senator, [Minnesota Freedom Fund](#) has attracted celebrity donors like Steve Carrell, Seth Rogen, Rob Delaney, Cynthia Nixon, and Don Cheadle. The group aims to steer donations to demonstrators arrested in Minneapolis during May riots following the death of George Floyd, a black man who died during his arrest by the Minneapolis Police Department.



Harris tweeted in favor of the bail fund on June 1, two-and-a-half months before she was tapped for the Democratic ticket with Biden, a two-term vice president and 36-year Delaware senator. Her advocacy of the bail fund has the potential to play into President Trump's "soft on crime" charge against the Biden ticket. Harris, in pushing the bail fund, implicitly brings her expertise from a career in law enforcement, including six years as California attorney general and seven years as San Francisco district attorney.

The MFF raised \$35 million in the wake of the riots. But by early August, [Minneapolis' Fox 9](#) reported that the fund bailed out defendants from Twin Cities jails charged with murder, violent felonies, and sex crimes.

At the height of MFF's popularity, contributions to MFF jumped from \$1,000 daily to \$100,000. Suspects who were released as a result of the fund providing bail included a gunman who shot at police during the May riots, a woman accused of killing a friend, and a twice-convicted rapist.

"I often don't even look at a charge when I bail someone out," MFF's Greg Lewin said when asked about bailing out these suspects. "I will see it after I pay the bill because it is not the point. The point is the system we are fighting."

Additionally, according to Jeff Clayton of the [American Bail Coalition](#), there were not many peaceful protesters that needed the MFF to bail them out.

"They don't report publicly who they bail out. In other words, there's really no way to find out unless you go case by case, pull the files to find out if this bail fund posted the bail for these defendants and what we found out ... essentially, they were not bailing out peaceful protesters, really at all," Clayton told the *Washington Examiner*.

"The peaceful protesters that were arrested and that were assigned bail was probably around 10. In the first couple of weeks, the bails were \$78 or \$100 in most cases," he added.

Lewin confirmed this, [telling Fox 9](#) that only "about a dozen" protesters were ever bailed out using the fund's money.

MFF is among many [charity bail funds](#) across the country that engage in the same activity as MFF. An umbrella of bail funds around the [nation raised around](#) \$90 million. According to Clayton, other than New York, no other state regulates charitable bail funds.

"New York limited the size of the bonds to \$2,000 or less — to make it for low-level cases, which is what it was intended for originally and they have to disclose where they get the money and who they bailed out and what the results were," Clayton explained, noting that MFF is also offering to post bond for federal immigration cases.



Elections

Biden's Pittsburgh Address Made Him More Vulnerable on Riots

The Democrats' standard-bearer simultaneously excused, even endorsed, the political violence by blaming President Trump for supposedly creating the animosity that justified the violence.

By Adam Mill • September 1, 2020

Ideology, rather than performance, was the yardstick for success. We had great stacks of books and brochures on the glories of the . . . revolution,” Egyptian General ‘Abd al-Mun’im Khalil complained to Michael Oren in [Six Days of War](#). “The books,” he added, “kept in perfect condition and inspected constantly, served as the basis for determining a unit’s fighting ability.”

In the days before the outnumbered and outgunned Israeli Defense Force crushed the Egyptian army, political loyalty held sway over merit in the revolutionary Egyptian ranks. It’s the same impulse that caused Joseph Stalin to [purge](#) the Soviet military of most of its best generals. And, it appears, that same impulse may have taken root in Joe Biden’s campaign as revolutionary purists form an echo chamber around their candidate. Instead of picking campaign staff and consultants based on merit, they have [concentrated](#) on diversity goals to meet internal purity tests.

Like the Egyptian army on the eve of its humiliating defeat, Biden takes advice from ideologues instead of voices representing the mainstream Americans he hopes to lead. How else to explain the Biden campaign seeing political advantage from offering financial support to the rioters burning Minneapolis?

“If you’re able to, chip in now to the @MNFreedomFund to help post bail for those protesting on the ground in Minnesota.” Biden’s running mate Kamala Harris [tweeted](#) on June 1, 2020. Fox 9 in Minneapolis [reports](#) the Minnesota Freedom Fund, with Harris’s help, has raised \$35 million—increasing daily fundraising from \$1,000 to \$100,000 per day.

Jeff Clayton, the executive director of the American Bail Coalition, noted that all of the money raised in the COVID-19 era bailed out “violent criminals, because that’s all that is left.” MFF [used](#) these donations to bail out Donovan Boone, charged with choking his ex-girlfriend in her own home, and [Jaleel Stallings](#), who is accused of shooting at police during a “protest.” Additionally, at least 13 members of Biden’s staff have made donations to MFF. One Biden campaign staffer, a supervising video producer named Sara Pearl, [retweeted](#) a comment that, “pigs are sweet, intelligent and compassionate,” police officers are “monsters” who “don’t deserve to be called pigs.”

Harris recently [said](#) of the Black Lives Matter protests:

I am very clear that some of the success that we’ve been able to achieve around criminal justice reform would not have happened in recent years were it not for Black Lives Matter . . . And the intensity and the brilliance of that movement that forced, at least, that there would be some counter-force to the status quo which is so reluctant to change, if not hostile to change . . . They’re not gonna stop. And that’s—they’re not—this is a movement, I’m telling you. They’re not gonna stop.

Hillary Clinton contributed to the “by any means necessary” atmosphere by [urging](#) Biden to refuse to concede the election under any circumstances. *Any* circumstances? Even if Trump gets more Electoral College votes? Chilling.

Then reality penetrated. Don Lemon of CNN accidentally [said](#) the quiet part out loud to Chris Cuomo. “The rioting has to stop, Chris, as you know and I know, it’s showing up in the polling. It’s showing up in focus groups. It is the only thing—it is the only thing right now that is sticking.”

The rioting has to stop *because it’s showing up in the polling*.

On Monday, Biden attempted to condemn the rioting in an [address](#) in Pennsylvania. “The current president is . . . stroking [*sic*] violence in our cities.” Biden then condemned the police encounters leading to the riots, George Floyd, Breonna Taylor, and “violence of extremists and opportunists—right-wing militias, white supremacists, vigilantes who infiltrate protests carrying weapons of war, hoping to wreak havoc and to derail any hope and support for progress.”

Of course, it’s just a wishful fantasy that “right-wing militias” cause riots by infiltrating peaceful protests. There are hours of video available online that clearly show the true nature of the leftist mobs rampaging in our cities.

After casting red meat to his activist supporters, Biden then turned to the obligatory condemnation of the riots and looting.

“Violence will not bring change, it will only bring destruction. It’s wrong in every way. It divides instead of unites,” he said. But Biden quickly returned to blaming Trump for the riots.

“The fires are burning and we have a president who fans the flames rather than fighting flames . . . he can’t stop the violence because for years he’s fomented it . . . does anyone believe there will be less violence in America if Donald Trump is reelected?”

Biden then declared, “the incumbent president makes things worse, not better . . . sows chaos rather than providing order.” Trump is making the rioters mad. So the riots are Trump’s fault.

The Pennsylvania speech attempted to chart a very narrow course between condemning the violence but not the people perpetrating the violence. Biden simultaneously excused, even endorsed, the political violence by blaming Trump for supposedly creating the animosity that justified the violence. The implication is clear: While the violence is bad, we’re all trying to get rid of Trump. So how bad is it really?

Since several members of Biden’s campaign donated money to bail out the violent “protestors” who added to this chaos, it’s impossible for the Biden camp to claim opposition to the beneficiaries of those donations. By blaming Trump, Biden enables the violence. The arsonists and thugs destroying American cities have, by Biden’s estimation, a good motive: get Trump. The condemnation was an apology on their behalf. No, they shouldn’t burn businesses owned by innocent Kenoshans (naughty, naughty) but look at what good reasons they had! Orange Man Bad!

Somebody in the Biden camp continues to restrain the candidate from a full-throated condemnation of these criminals. He’s clearly trying to keep a coalition of allies intact.

In support of Don Lemon’s caution that the George Floyd-inspired riots are political poison, the media recently failed to cover a new law enforcement shooting. While the front page of the [Los Angeles Times](#) reported Tuesday that L.A. County sheriff’s deputies [shot](#) and killed an African American suspect, the story appears “below the fold,” and has received virtually no attention in the mainstream press which, until recently, hyped such tragedies to stoke riots. According to the story, the suspect had a gun but dropped it before being shot by law enforcement.

A week ago, the case would have been sensationalized and distorted by the unitary press. But now that the riots are known to hurt Biden's political fortunes, the press cynically turns off the rage spigot. In other words, the riots could have been curbed or avoided by responsible journalism at the outset.

Biden has taken three horrible positions that can only hurt him: 1) Responsibility for the riots is with Trump, not the rioters. 2) Yes, we should "[redirect](#)" money away from the police forces (cough, "defund"). 3) Hell yes, we're [taking your AR-15 away](#).

Soon Biden's pollsters will break the bad news: Americans will not elect a president who advocates surrendering our communities to violent criminals.



Kamala Harris Pushed For Bail Fund That Led To Murder And Rape Suspects Getting Out Of Jail While Awaiting Trial

By **Michael Cantrell** - September 1, 2020

As rioting, looting, and other acts of violence continue to increase in places like Kenosha, Wisconsin and Portland, Oregon, a charitable bail organization chatted up by Democratic vice presidential nominee Sen. Kamala Harris is catching all sorts of flack.

Aside from Harris, the Minnesota Freedom Fund has managed to attract the attention of major celebrity donors like Rob Delaney, Seth Rogen, Steve Carrell, Cynthia Nixon, and even War Machine himself, Don Cheadle. The mission of the group is to raise funds for demonstrators arrested in Minneapolis during the May riots that rocked the city following the death of George Floyd at the hands of law enforcement officers.

Here's more on this via [The Washington Examiner](#):



Harris tweeted in favor of the bail fund on June 1, two-and-a-half months before she was tapped for the Democratic ticket with Biden, a two-term vice president and 36-year Delaware senator. Her advocacy of the bail fund has the potential to play into President Trump's "soft on crime" charge against the Biden ticket. Harris, in pushing the bail fund, implicitly brings her expertise from a career in law enforcement, including six years as California attorney general and seven years as San Francisco district attorney.

The MFF raised \$35 million in the wake of the riots. But by early August, Minneapolis' Fox 9 reported that the fund bailed out defendants from Twin Cities jails charged with murder, violent felonies, and sex crimes.

At the height of MFF's popularity, contributions to MFF jumped from \$1,000 daily to \$100,000. Suspects who were released as a result of the fund providing bail included a gunman who shot at police during the May riots, a woman accused of killing a friend, and a twice-convicted rapist.

"I often don't even look at a charge when I bail someone out," MFF's Greg Lewin replied after he was asked about bailing out these individuals. "I will see it after I pay the bill because it is not the point. The point is the system we are fighting."

According to Jeff Clayton from the American Bail Coalition, there weren't that many peaceful protesters that needed the MFF to provide bail funding for them.

"They don't report publicly who they bail out. In other words, there's really no way to find out unless you go case by case, pull the files to find out if this bail fund posted the bail for these defendants and what we found out ... essentially, they were not bailing out peaceful protesters, really at all," Clayton said.

"The peaceful protesters that were arrested and that were assigned bail was probably around 10. In the first couple of weeks, the bails were \$78 or \$100 in most cases," Clayton continued.

Unfortunately, MFF isn't the only such charitable organization like this in the country to engage in this sort of activity. A number of these groups around America have managed to scrape together \$90 million. Clayton said that other than the state of New York, no other state in the country regulates these charitable bail funds.

"New York limited the size of the bonds to \$2,000 or less — to make it for low-level cases, which is what it was intended for originally and they have to disclose where they get the money and who they bailed out and what the results were," he explained.

Clayton also noted that funds from these groups are also used to help with immigration cases.

Thursday, September 3, 2020

Kamala Harris tweeted support for a bail fund, but the money didn't just assist protesters

By
Glenn Kessler

“Kamala Harris helped violent rioters in Minnesota get out of jail to do more damage.” — Sen. Tom Cotton (R-Ark.), in an [Aug. 30 tweet](#) over a [June 1 tweet](#) by Sen. Kamala D. Harris (D-Calif.) seeking donations for the Minnesota Freedom Fund

“Thirteen members of Biden’s campaign staff donated to bail and — rioters — they’re getting them out of jail. Looters — they got them out of jail. And his running mate, Kamala, urged their supporters to do the same thing.”

— **President Trump, at a [news conference](#), Aug. 31**

Until the killing of George Floyd in police custody, the Minnesota Freedom Fund (MFF) was a relatively small vehicle for assisting people who needed cash for bail.

MFF’s [2018 tax filing](#) shows it raised only about \$100,000 that year. Just weeks after Floyd’s death, it raised an astonishing \$35 million, in part because of tweets such as the one by Harris, who is now the Democratic vice-presidential nominee. That influx has put [a strain](#) on an organization that at the time had only one full-time staff member.

For the purposes of this fact-check, we are going to mostly focus on Cotton’s claim that “violent rioters” were bailed out in order “to do more damage.” But we will also address Trump’s comment.

The Facts

MFF is among the many organizations that seek to mitigate what some see as inequities in the nation’s cash-bail system. People who cannot afford to pay the full amount in cash for bail generally must either wait in jail until their trial or borrow money, forfeiting 10 percent of the loan up front.

Some states have moved to eliminate cash bail. For instance, New Jersey, under former governor Chris Christie (R), replaced it with a point-based system, overseen by judges, that assesses risk based on the nature of the charges, the defendant’s prior record and the risk to the public. So far, [the state says](#), people released under the new system appear no more likely to commit a crime while waiting for their trials than people previously released under the cash bail system.

Former vice president [Joe Biden](#), the Democratic presidential nominee, also has [proposed](#) eliminating cash bail. Critics of the current bail system say it mainly harms people of color, who are poorer and less able to afford bail, forcing them to lose jobs and income as they await trial. MFF says 60 percent of the people incarcerated in Minnesota are being held in pretrial detention — and that Black people make up 7 percent of the state population but 31 percent of the prison and jail population.

If a defendant shows up for court hearings, the full value of the cash bail is returned. So MFF puts up the cash, and the defendant signs a document saying the money should be given to MFF at the end of the process.

Trump’s comment about Biden staff members refers to a [Reuters report](#) that at least 13 Biden staff members posted on Twitter on May 26 and 27 that they had contributed to MFF. (There are more than 2,000 people who are part of Biden’s campaign staff.) A Biden campaign official noted that the staff members who donated did so on their own

initiative and it wasn't organized by the campaign.

Then, on June 1, Harris (who was not yet chosen as Biden's running mate) tweeted a link to an MFF donation page on ActBlue:



That's the tweet that Cotton highlighted, adding: "Don't believe her when she says she 'condemns the violence' — look at her record, not her words."

But it turns out that few people involved in the protests needed MFF's help to get out of jail.

According to an accounting by the [American Bail Coalition](#), verified by The Fact Checker with a review of [Hennepin County jail records](#), all but three of the 170 people arrested during the protests between May 26 and June 2 were released from jail within a week. Of the 167 released, only 10 had to put up a monetary bond to be released; in most cases, the amounts were nominal, such as \$78 or \$100. In fact, 92 percent of those arrested had to pay no bail — and 29 percent of those arrested did not face charges. (The American Bail Coalition is a trade group of insurance companies who profit from underwriting bail bonds.)

MFF "definitely got a windfall," said Jeffrey J. Clayton, executive director of the American Bail Coalition. "The purpose for what they got the money was not there." Still, there are some instances of MFF assisting people accused of serious crimes. One defendant, Jaleel Stallings, was charged with attempted murder after allegedly shooting at police during protests on May 30, [county records show](#). MFF paid \$75,000 in cash to get Stallings out of jail, according to MFF interim director Greg Lewin. He said Stallings was among a dozen people MFF helped with direct bail actions after the protests.

The [probable charge statement](#) against Stallings says officers wore their uniforms, as well as SWAT vests and helmets, as they fired 40 mm plastic projectiles to disperse crowds. As police officers patrolled in an unmarked white van, a group of people ran away, but Stallings allegedly approached the vehicle and appeared to fire three or four rounds from a [AK-47-style mini Draco pistol](#) after an officer fired a plastic projectile in his direction. Stallings was quickly subdued and arrested.

MFF also paid \$750 toward a bond for Chylen Evans, [who was charged](#) with looting a liquor store, clothing store and mobile store.

“MFF believes that every individual who has been arrested by the police is innocent until proven guilty, and if a judge deems them eligible for bail, they should not have to wait in jail simply because they don’t have the same income or resources as others with more privilege,” Lewin told The Fact Checker. He said that MFF spent \$250,000 in early June on bail actions, including the \$75,000 for Stallings, but that figure also includes non-protest cases.

Eric Rice, Stallings’s attorney, declined to comment on Stallings’s possible defense. On Aug. 10, Minneapolis television station KMSP aired [a report](#) documenting how, after receiving the torrent of donations, MFF had bailed out a number of people charged with violent crimes, including posting \$100,000 for a woman accused of killing a friend and \$350,000 for a twice-convicted rapist charged with kidnapping, assault and sexual assault in two separate cases.

The court records do not show who provided the bail, but KMSP was able to determine MFF’s involvement because defendants file a document saying the bail money should be given to MFF. [Tom Lyden](#), a KMSP investigative reporter, graciously provided a photo of one of those documents and other information gathered for his report. Before the influx of cash, MFF’s average bail was \$342, according to numbers Lewin provided KMSP. Now the average bail is \$13,195.

After Lyden’s report aired, Lionel Timms, a man whom MFF bailed out on an assault charge in July, [was charged](#) with committing third-degree assault on Aug. 14, leaving the victim with a traumatic brain injury and a fractured skull.

MFF issued [a statement](#) that it was “deeply saddened and troubled” by the arrest and that not enough support was given to Timms “to safely come back to the community,” including promised housing.

“We do not make determinations of bail support based on the crimes that individuals are alleged to have committed,” Lewin said. “We are, however, taking steps to strengthen our internal procedures for ensuring that those we bail out receive support, especially if they are in need of housing or medical treatment. Those processes involve renewing our commitment to listen to the communities directly impacted by our efforts, and ensuring those we bail out have the necessary support to safely return to their families and their community.”

Aaron MacLean, a spokesman for Cotton, said the Timms case backs up the message of Cotton’s tweet. “Anyone who donated/solicited donations to the Minnesota Freedom Fund shares responsibility for how the money is used — in this case, to bail out a violent criminal who went on to commit a further act of violence,” he said in an email. “Indeed, no one should be soliciting donations for (or, in the case of Joe Biden’s staff, actually donating to) an organization that takes an incredibly reckless approach to public safety.”

The Pinocchio Test

With its limited assets before Floyd’s death, MFF previously could not handle many felony cases. But now it has the funds to do so. Given MFF’s policy that the nature of the crimes is not relevant, more people charged with possibly heinous crimes will be freed on bail in Minnesota if judges deem them eligible for release.

Cotton’s claim that “violent rioters” were released with MFF funds has some basis in fact. But we stumble over Cotton’s additional claim that violent rioters were let out of jail to do more damage. MFF did bail out at least two people charged with attempted murder or burglary during the protests. But there is no evidence they committed additional crimes after being released. His spokesman points to a disturbing case that was unconnected to the protests. But that’s not what Cotton tweeted.

Moreover, it turns out the MFF was only a bit player in the release of people charged during the protests. The vast majority of people — 92 percent — had to pay no bail. So both Cotton and Trump are wrong to suggest that the donations led to the release of

many protesters or rioters.

At the same time, people who sent millions of dollars to MFF to aid peaceful protesters may be surprised to learn their moneys were not needed in the first place, even if they support elimination of the cash-bail system.

It is certainly fair to raise questions about how MFF is handling the millions of dollars it has raised and whether greater oversight is needed. In theory, Cotton would have been eligible for one Pinocchio because of the second part of his sentence but we will leave this unrated.



LAW WEEK COLORADO

What Will be the Future of Pretrial Assessment?

Colorado's multi-jurisdiction risk assessment tool faces uncertain future

AVERY MARTINEZ
LAW WEEK COLORADO

There are many tools across the country used to assess pretrial risk for criminal defendants. In Colorado, multiple counties take part in what is called the Colorado Pretrial Assessment Tool, also known as CPAT. CPAT was developed for bond decisions and is used to measure a given defendant's risk of failure to appear or for being arrested again while under pretrial release.

But CPAT has been criticized in the past, and questions remain even among those who use the tool regularly. In July, the University of Northern Colorado released a study about the effectiveness and validation of the CPAT.

"I think this is the end of the CPAT as we know it as a result of this report," said Jeff Clayton, executive director of

the American Bail Coalition. He added that there was a push in the past to make the CPAT a statewide program.

CPAT was created in 2012 and involved a sample of 2,000 defendants from 10 Colorado counties, according to the study. Through analysis of 177 variables, a 12-item CPAT was created with scores range from 0-82 in four categories, indicating risk of failure to appear or reoffend under pretrial release, which are ranked from lowest to highest, according to the study.

The risk factors and scoring include information gathered from the details of a person's possessions, history of alcohol or drug usage, whether a person has a home phone or cell phone, mental health treatment, age, prior jail or prison time, active warrants, pending cases and history of revoked bond or supervision.

Clayton says that risk factors make

CPAT biased toward the homeless population of the state. The U.S. Census website states that in July 2019, solely descended Black or African American population of Colorado was only 4.6%.

"Which means we're hammering African American defendants at the lowest socio-economic level," Clayton said.

By 2017, CPAT was used in 25 of Colorado's 64 counties.

"I think this is the end of the Pretrial Assessment Tool as we know it as a result of this report."

—Jeff Clayton, Executive Director of the American Bail Coalition

In 2018, the Homelessness Research Institute estimated 40% of the national homeless population were Black and were overrepresented among people experiencing homelessness.

The goal of the UNC study was to validate and examine CPAT, then using stakeholder feedback, to pilot a revised

CONTINUED ON PAGE 22...



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SEX OFFENDER REGISTRY CONTINUED FROM PAGE 13...

utterly irresponsible.”

However, many who oppose sex offender registries say studies don’t support the idea that registries improve public safety. In their amicus brief, the scholars argued Colorado’s registry is “packed with persons very unlikely to re-offend.”

An oft-cited figure quoted in *Smith v. Doe*, the U.S. Supreme Court decision the 10th Circuit deferred to, claims that registrants re-offend at a rate of up to 80%. But according to scholars, that figure “was grounded on casual impression, not data, and has since been disavowed by the very sources the Court relied upon in making it.” In their brief, the scholars cited one study suggesting the three-year re-offense rate could be closer to 5% and referenced three other studies that “could find no effect of public notification on sex crime rates.”

“More and more studies have shown that registration requirements do not protect the public —

they function only as a cruel punishment,” said Mark Silverstein, legal director at the American Civil Liberties Union, who represented the three men in their appeal.

“The state requires persons convicted of sex offenses to register for the rest of their lives and disclose address, job, vehicle, email address, which the state makes available for publishing on the internet, enabling social media vigilantes to pursue them, hound them, and pressure their potential employers, landlords and neighbors,” Silverstein said in an e-mail.

“Everyone, everyone except the court, knows that this is extra punishment imposed on people who have already served their time,” he added.

Kepros said the 10th Circuit has been “swimming upstream” and “clinging to some of the old rationales” when it comes to sex offender registry cases. In recent years, federal and state appellate courts have found registration requirements in other states to be punitive or unconstitutional. Restrictions on where registrants can live, work or travel have

been struck down by the 6th Circuit and the state supreme courts of New York and California, and the supreme courts of Ohio and Pennsylvania found registration requirements for juveniles to be unconstitutional.

Colleen Kelley, a partner at Wolf Law who represents people convicted of sex crimes, said the 10th Circuit’s opinion surprised her in how “dismissive” it was in its conclusion that the Colorado Sex Offender Registry Act easily passes the legitimate government interest test, echoing the skepticism of the amici scholars and ACLU’s Silverstein about the law’s effect on public safety.

“They really gloss over this analysis of whether or not it constitutes punishment,” Kelley said. “And for the people who are living this, it absolutely feels like punishment.”

“To me, [the 10th Circuit’s decision] doesn’t reflect that same amount of empathy that the lower court had in terms of seeing how it affected real people and simply disregarding the idea that this was in fact punishment.”

In comments to media, ACLU’s Sil-

verstein said it would have been difficult to uphold the lower court’s ruling due to precedent. But Kepros, of the public defender’s office, told Law Week, “I think it could have come out a different way.”

“I think when your factors are this loose, courts can come to different outcomes, and maybe that’s a problem with the standards that are being used,” she said. Kepros added that the role of the internet has changed in the nearly two decades since the U.S. Supreme Court ruled on *Smith v. Doe*.

“We all know at this point that your internet presence is a major part of your personal and professional identity,” Kepros said. “And so, if you’re out in the world where that identity has got the word ‘sex offender’ scrawled all over it, it’s going to be hard for people to get beyond that to [become] productive members of society.”

“So you can say, ‘Well, we have precedent.’ But when the world around that precedent has changed, you hope that the courts will take that into account in deciding how to apply it.” •

—Jessica Folker, JFolker@circuitmedia.com

PRETRIAL ASSESSMENT CONTINUED FROM PAGE 14...

version of the tool called CPAT-Revised, or CPAT-R. The study had three phases and was conducted between 2018 and June 2020, according to the study.

Phase One included a retroactive validation of CPAT covering over 3,500 cases in 2015 and 2016 with data from seven participating counties across the state, an online survey to criminal justice stakeholders, as well as court data from Denver Municipal Courts, the Colorado Judicial Branch and the Colorado Bureau of Investigation.

CPAT was validated for assigning the correct risk of new arrest and failure to appear, according to the study. However, the pretrial risk assessments received a validation score between .50 and .75, and CPAT’s validation score was at .58, at the lowest end of the score range. Allegedly, validation scores can indicate a degree of predictive performance, and a good ranking is between .55-.63 and excellent is .71 or above.

The study also found that further examination of risk category designation and tool modification could improve the predictive performance of CPAT. Analysis indicated that with modifications, the tool could improve with an estimated validation score above .60, and modifications could be made to categories such as risk items and specification of risk outcomes.

Phase two used focus groups and

observations of the seven counties, according to the study. The participants for the groups were recruited from a survey. The groups consisted of pretrial officers, judges, prosecutors, public defenders and other criminal justice administrators.

The groups received questions pertaining to how the participants viewed CPAT and utility of the tool in their work. The study identifies that some items relating to CPAT were unclear to respondents, like what counts as mental health problems, and many defense attorneys felt the tool penalizes indigent defendants, such as renting instead of owning, not having a phone and that “those with lower or no income are scored higher than those who have more economic advantages.”

Part of CPAT involves an interview process with defendants, which all four groups expressed were important to gather non-system information but allows for inaccurate information to be provided.

One defense attorney expressed that in their experience, the interview “tends to be highly subjective and falls prey to the biases of the interviewer, who is often unsympathetic to indigent defendants.” Further, the interviewer in the area where the attorney operates is often the check-in person for pretrial tracking services and tends to “play favorites” with clients.

Of note, the study mentions that “many of the respondents did not prioritize CPAT in their decision-making process” and that the risk assessment

score and category are perceived as being no more or less important to other factors. One prosecutor wrote that the score was a “piece of information” and not something that could be relied upon to make arguments to judges.

Further, the study found that overriding a CPAT score was “especially” relevant to judges dealing with public safety. Based on the feedback, the study states that the risk assessment score was thought to differ occasionally from risk decided on professional discretion alone.

Stakeholders also wanted to understand why the questions for CPAT were picked. One pretrial officer was quoted as saying, “because I feel like there’s just not a lot of faith in the tool as it is. Especially with the other stakeholders.”

The third phase of the study was the piloting of CPAT-R over three months from November 2018 to February 2019. CPAT-R showed an accurate assignment of risk of new arrest and FTA and was estimated to perform at an AUC score of .65.

The pilot CPAT-R was assessed for “accuracy equity and predictive parity” throughout race/ethnicity, gender and residential status groups, according to the study. This informed a modification to the pilot, removing two of the risk factors: prior violent arrest and self-reported time living at current residence. Assessing the features of the risk factor definitions also led to the removal of self-reported prior alcohol or drug problem as a scored response.

The recommended CPAT-R was

re-validated on a sample of primary pretrial outcomes: new arrest, FTA or both. “The test sample’s assessment errors were comparable, indicating accuracy equity across race/ethnicity and gender, and minimal bias across sub-groups. Differences in predictive parity across residential status were reduced but were still greater than the other sub-group categories,” according to the study.

For Clayton, one table in the report exemplified his concerns on CPAT. When a person is predicted as risky and is not, “we get it wrong for Black defendants significantly more than white defendants.” Based on these numbers, 13 out of 100 Black people will be assessed at a higher risk, and the magnitude of that over time is immense.

Table 22 shows validation samples for race/ethnicity assessment errors. The overall prediction error for the pilot CPAT-R showed .41 for whites, .50 for Blacks and .43 for Hispanics. The failure prediction error was at .52 for whites, .66 for Blacks and .50 for Hispanics. The success prediction error was .23 for whites, .27 for Blacks and .27 for Hispanics.

When looking at the total number of individuals evaluated by the risk assessment, which are all in large jurisdictions of Colorado, Clayton wondered how many minority groups were overrepresented and what had been the result? •

—Avery Martinez, AMartinez@circuitmedia.com

CENSUS CONTINUED FROM PAGE 16...

weren’t enough customers in Milan to keep the enterprises afloat. Others offer a more cynical view; they say the old-timers didn’t want to support it.

The Micronesians are teaching

“some of these old, stubborn Norwegians to have more tolerance,” said Dalen, the grocery store cashier. “To get to know their culture, and their wanting to know ours.”

Regardless of how much the Micronesians adapt, several old-timers agree their rural culture will never ful-

ly accept outsiders.

Some of the early clashes could have been handled better, Anderson said. “We didn’t do enough because we didn’t understand what was coming.”

“Honest to God, 90% of us ... could not imagine why a person would leave a tropical island to come live in this,”

said Anderson, from his perch at the library front desk. “I guess we didn’t know how bad it was there, what their conditions were, that this was favorable. We watched too much Gilligan’s Island or something with palm trees.”

Anderson has been in Milan for 35 years, and mayor off and on for 20. He



Pretrial Risk Assessment

by [Jeffrey Clayton](#)

September 2020

Nearly everyone both within and outside of the legal profession has heard of bail reform. Couched typically as “America’s cash bail system,” it has been branded as evil and in desperate need of repair despite being one of the ten core constitutional rights protected by the Bill of Rights. Reformers loudly sold their premise that the system is biased against certain defendants based on either their race or poverty level. This begged the question: what can we do about it?



The answer arrived about a decade ago in the form of pretrial risk assessment algorithms. A one-size-fits-all solution, it neatly evaluated criminal defendants on their probability of failing to appear in court or committing a new crime, then presented the risk score to a judge. Not all scores were created equal, however. Some carried heavier weights than others, which drove significantly higher negative outcomes. For example, a person charged with a felony who was determined to be “low risk” might have been released on a promise to reappear in court. A different person charged with exactly the same crime could be labeled “high risk,” and thus have bail set at an unattainable level or simply be locked-up outright without bail, as is presently the case in New Jersey.

Civil rights groups quickly lined-up to get on the bandwagon to advocate for the wholesale adoption of this system based on the use of risk assessment tools. They claimed it could replace money bail, while substantially reducing any inherent bias. The goal of a color-blind criminal meritocracy was the idea, and many national groups of elected and public officials began to buy in. The most significant public stance was taken by the Conference of Chief Justices. Comprised of the top justices and judges in the United States and its territories, this august body, as we shall see, wound up on the dead-wrong side of things.

In 2015, the Conference of Chief Justices endorsed the universal use of risk assessment tools across the United States, but within a year, cracks in their implementation began to show. At first, there was merely concern as to potential racial and gender bias, as well as discrimination against those with disabilities. But there was also evidence of problems with due process, in which actuarial group data was applied to an individual. Concerns also emerged over transparency, including the determination of who exactly determined the risk percentages of a new crimes that counted as “high, medium or low.”

By early 2017, a tsunami of academic and other research put risk assessment tools on trial. The jury came back and delivered its stunning verdict. 1) They didn’t work, i.e., they didn’t decrease pretrial jail populations; 2) they increased crime and failures to appear in some jurisdictions; and (3) they did not decrease racial bias and other bias in the system. In some cases, they actually made it worse.

Soon after, the dominoes began to fall. Organizations that previously supported risk assessments suddenly and quickly began pivoting on their positions, coming up with a host of excuses for doing so. This included the Pretrial Justice Institute, the vanguard of social justice organizations, that had vociferously advocated for risk assessments for so long it could be termed generational support. Without warning it announced that it would no longer support risk assessments. Moreover, it declared that it would work instead to undo their use throughout the nation.

Others organizations, like the ACLU saw its various regional chapters caught in a bind when the national body disavowed risk assessment, despite its longstanding support of bail reform. Forced to decouple use of the tools from the issue, which they had touted as a singular solution, they were left offering no easy answers at all.

This set the stage for where we are today -- which is a chaotic mess. Those who believed in the scientific validity of pretrial risk assessment have now found themselves with no answers for the detractors who had argued that they didn't work. That mass of naysayers has now grown to hundreds of bipartisan groups and academics who have determined on their own that risk assessments cement and increase racial and other bias in the system, and don't improve outcomes.

As they scramble to regroup, supporters of risk assessments are peddling a new, but equally flawed message: judges set bail, not computers. Their flawed argument holds that because judges can, under the new reform rubric, disregard risk assessment results, it is perfectly fine that they can still consider its recommendations, *even if actually applied, they would increase racial bias*.

Pushers of risk assessment methodology cannot have it both ways. Either the tools are scientifically validated, in which case they should be followed, or they are not. If they are not, why they should be they be abided by, even in part?

To this point, a disturbing point looms large. The argument from supporters is that judges should be able to look at and follow risk assessments, giving heavier weight in some cases, less weight in others. However, because we must now concede that the tools are not predictive, doing so leaves judges with no lodestar in regarding or disregarding risk assessment results. Indeed, how much weight should a risk assessment be given if it is known to be racially biased?

Overwhelming evidence be damned, the Conference of Chief Justices is not retreating on their policy of calling for national pretrial risk assessment for all criminal defendants charged with a crime in our country. Despite heavy opposition, it is clear that these high-level judges have been persuaded by dubious science. That this is a serious dereliction of duty is obvious. There can be no middle ground on the issue; either they are scientifically valid and make good predictions, and thus should be followed, or they don't.

If we concede they don't, which all evidence indicates is the case, then we must also concede that judges who consider their results when deciding to consider them in any given case will be making arbitrary choices as to the degree or weight to give them.

As a nation, we must remain dedicated to our goal of providing equal justice for all. When reformers first challenged the criminal justice system not so long ago, they demanded a solution to the question of what can be done about inherent racial bias against defendants. We now know there are no easy answers and that the panacea promised by pretrial risk assessments is specious. What has become clear is that the middle ground offered by the use of these tools is more like a no-man's land that must be avoided at all costs.

Biography

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton

also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

[Email Author](#)

Additional articles by [Jeffrey Clayton](#)

Thursday, September 24, 2020

[Fact Checker](#)

Analysis

Three Trump ads in Spanish, many distortions

By

[Salvador Rizzo](#)

September 24, 2020 at 12:00 a.m. PDT

With Florida an intense battleground in the presidential election, President Trump’s campaign has been running ads in Spanish-speaking television markets and uploading them to YouTube (“[Donald J. Trump En Español](#)”). In many cases, the ads simply repeat false or misleading claims first uttered in English about his Democratic opponent, former vice president [Joe Biden](#).

We previously [fact-checked Trump’s “Goya” campaign ad](#). Now we’re taking a crack at three more Spanish-language ads.

‘[Capacidad mental](#)’

“*Mental capacity*”

Spanish: “*Ahora a los 77 años y en su tercera candidatura presidencial, Biden claramente está debilitado. ... Joe Biden no tiene la fuerza, la energía, ni la capacidad mental para liderar este país.*”

English: “*Now 77 years old and on his third presidential campaign, Biden clearly is weakened. ... Joe Biden doesn’t have the strength, energy or mental capacity to lead this country.*”

To support this claim, Trump’s ad shows a truncated clip of Biden stumbling over his words and then a separate clip of Biden saying, “Sometimes I wake up and I think it’s 1920.”

Immediately afterward, the narrator says Biden lacks the “strength, energy or mental capacity” to serve as president.

Biden was not alive in 1920 (he was born in 1942, four years before Trump) and was not confused about what year it is.

Biden’s full remarks make clear that Biden was speaking about a lost sense of community: “As I said in your church, Rev., sometimes I wake up and I think it’s 1920 and not 2020. The way — I really mean it — the way in which we talk to one another today. The way in which the debasing of politics has occurred. The way in which this president, Trump, has so demeaned people.”

‘[Arrodillado](#)’

“*Kneeling*”

Spanish: “*Joe Biden se arrodilla, y sus empleados pagan fianzas. Y Biden no enfrenta a los izquierdistas radicales que quieren eliminar a la policía.*”

English: “Joe Biden kneels, and his employees pay bail [for violent protesters]. And Biden doesn’t stand up to the radical leftists who want to eliminate the police.”

At least 13 Biden staff members posted on Twitter on May 26 and 27 that they had [contributed to the Minnesota Freedom Fund, an organization that fronts cash bail for defendants](#). (There are more than 2,000 people who are part of Biden’s campaign staff.) A Biden campaign official noted that the staff members who donated did so on their own initiative and that it wasn’t organized by the campaign.

According to an accounting by the American Bail Coalition, verified by The Fact Checker with a review of Hennepin County jail records, all but three of the 170 people arrested during the protests between May 26 and June 2 were released from jail within a week. Of the 167 released, only 10 had to put up a monetary bond to be released; in most cases, the amounts were nominal, such as \$78 or \$100. In fact, 92 percent of those arrested had to pay no bail — and 29 percent of those arrested did not face charges.

One defendant, Jaleel Stallings, was charged with attempted murder after allegedly shooting at police during protests May 30, [county records show](#). MFF paid \$75,000 in cash to get Stallings out of jail, according to MFF interim director Greg Lewin. He said Stallings was among a dozen people MFF helped with direct bail actions after the protests. MFF also paid \$750 toward a bond for Chylen Evans, [who was charged](#) with looting a liquor store, clothing store and mobile store.

As for the other claim in this ad, as Fox News reported as far back as June 8, Biden opposes the concept of eliminating police departments. We have previously [given the Trump campaign Four Pinocchios](#) for asserting the opposite in its television ads.

“No, I don’t support defunding the police,” Biden said in a CBS News interview. “I support conditioning federal aid to police based on whether or not they meet certain basic standards of decency and honorableness and, in fact, are able to demonstrate they can protect the community and everybody in the community.”

Biden, in fact, has come under scrutiny from the left for his position and for proposing to spend an additional \$300 million a year on the community policing program started in the Clinton administration. (That would effectively double the budget for the program.)

[‘Progresista’](#)

“Progressive”

This ad begins with Biden saying, “I’m going to go down as one of the most progressive presidents in American history.”

Then it cuts to Hugo Chávez, Fidel Castro, leftist politician Gustavo Petro of Colombia and Nicolás Maduro quickly saying the word “progressive” in Spanish.

Then Biden is shown embracing Sen. Bernie Sanders (I-Vt.), a self-described democratic socialist, after a presidential primary debate. Keep in mind: Biden prevailed in the Democratic primary by running as a moderate alternative to Sanders’s far-reaching liberal platform.

The narrator says, “When they call themselves progressive, it means ...” And then a clip of Castro thundering for a “socialist revolution” rolls.

In the United States, “progressive” is simply a shorthand for left-wing politicians and groups that support concepts such as criminal justice reform (which Trump also supports), single-payer health care or proposals to reach net-zero carbon emissions.

It’s a different universe from the socialist policies implemented by Castro, Chávez and Maduro. (Colombia is not a socialist country.) The Trump campaign often conflates liberal politics, the kind seen in the United States and many Western democracies, with Cuban- and Venezuelan-style socialism, but when we asked what specific Biden proposals mirror Cuba or Venezuela, we received no response.

Daily Mail

Bail fund boosted by Kamala Harris and 13 Biden campaign staffers 'helped release a man, 36, accused of sexually assaulting a child,' report says

- Court documents indicate that the Minnesota Freedom Fund may have helped release a man accused of sexually assaulting a child, Fox News reports
- Documents reportedly indicated that Timothy Wayne Columbus, 36, was released and requested his bail be returned to MFF
- Kamala Harris previously urged people to donate to MFF, and at least 13 Joe Biden campaign staffers publicized their donations
- MFF 'believes that every individual who has been arrested by the police is innocent until proven guilty'
- They also said that if a judge finds an individual eligible for bail 'they should not have to wait in jail simply because they don't have' available resources
- Joe Biden has said he wants to end cash bail because it discriminates against low income individuals

By [LAUREN EDMONDS FOR DAILYMAL.COM](#)

PUBLISHED: 18:50 EDT, 17 September 2020 | **UPDATED:** 19:14 EDT, 17 September 2020

A bail fund promoted by Sen. [Kamala Harris](#) and some [Joe Biden](#) campaign staffers reportedly helped release a Minnesota man accused of sexually assaulting a child. Records obtained by [Fox News](#) indicate that that Minnesota Freedom Fund (MFF) may have assisted in the release of Timothy Wayne Columbus. Columbus, 36, was charged with first-degree criminal sexual conduct for allegedly sexually assaulting a young girl. She was around 8 years old.

A warrant was issued for Columbus' arrest on June 25 but he was later bailed out of jail and, per court documents obtained by Fox News, filed to have his bail returned to MFF.



The Minnesota Freedom Fund , a bail fund based in Minneapolis, was publicized by Democratic vice presidential nominee Kamala Harris (pictured)

Harris and more than 10 campaign employees linked to Biden have requested donations from their followers during the demonstrations in Minneapolis this summer.

The story was first reported by [The Daily Caller](#) and [Alpha News MN](#).

Harris shared a Twitter post that asked people to donate to MFF on June 1, just one week after George Floyd died in police custody and nationwide demonstrations against police brutality gripped the nation.

'If you're able to, chip in now to the @MNFreedomFund to help post bail for those protesting on the ground in Minnesota,' Harris tweeted.

According to Fox News, court documents said that Columbus was a friend of the young girl's grandmother and the girl was living with her at the time.



Kamala Harris on June 1 shared a tweet that asked people to donate to the Minnesota Freedom Fund amid demonstrations over the death of George Floyd

Documents said that when the child was around eight, she told authorities that 'Tim' had sexually assaulted her on the couch.

'Victim did not tell anyone what happened at the time but years later told a family member.' the publication reports.

The warrant said the grandmother had seen Columbus say to the child 'this is our secret', prompting her to suspect Columbus of harming the child.

It wasn't until years later that the mother said she learned 'something happened.'

Columbus denied the allegations and maintained his innocence to authorities. He could face a maximum sentence of 30 years in prison, if convicted.

Columbus had a bail set at \$75,000 for conditional release, Fox News reports, and \$300,000 for unconditional release.

His bail request that asked the money be returned to MFF reportedly does not list the amount, but a judge approved Columbus for conditional release on July 1.



MFF's website said that it has used at least \$3,475,000 for bailing people out from the county jail, and \$210,000 specifically for demonstrators connected to the protests. Pictured: Kamala Harris

'Bail, also known as bond, is money charged by the state to release a person from custody while their criminal or immigration case proceeds,' according to [Believers Bail Out](#).

When a person pays bail and appears for their scheduled court appearances, the money is refunded. In regards to bail funds like MFF, people who have received that money will sign documents asking that the money be given back to the fund.

MFF's website said that it has used at least \$3,475,000 for bailing people out from the county jail, and \$210,000 specifically for demonstrators connected to the protests.

[Fox 9](#) reported in August that MFF had raised \$35million following Floyd's death. President Trump mentioned MFF during a press conference on August 31, where he attempted to disparage the group by linking it directly with protesters.



Pictured: Democratic presidential candidate former Vice President Joe Biden departs after attending campaign meetings at the Hotel du Pont in Wilmington, Delaware

'Thirteen members of Biden's campaign staff donated to bail and — rioters — they're getting them out of jail. Looters — they got them out of jail. And his running mate, Kamala, urged their supporters to do the same thing,' he said.

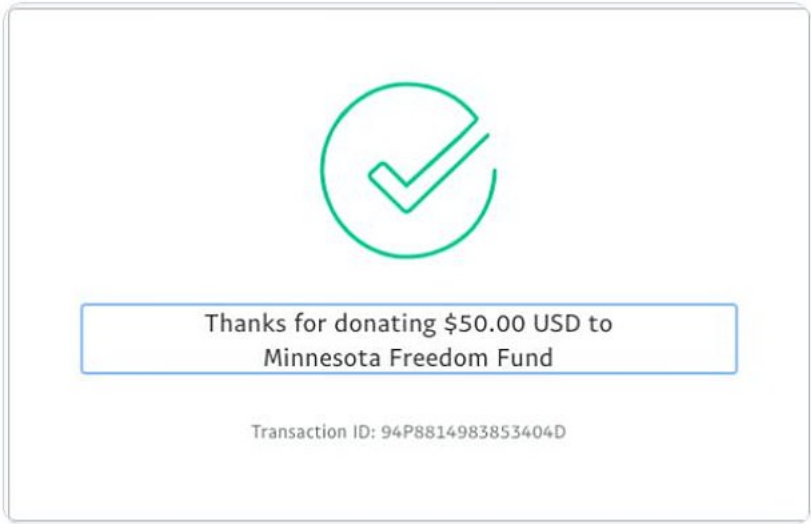
Trump was referring to a [Reuters](#) report that said at least 13 Biden campaign staffers said they had contributed to the fund in Twitter posts between May 26 and 27. But as pointed out by [The Washington Post](#), MFF only contributed to a small number of protest-related jail releases during initial protests. WaPo reports that 92 per cent of arrested protesters did not have to pay bail and just 10 per cent used a monetary bond, according to the American Bail Coalition.

The bail also helped release some non-protesters, including Christopher Boswell, who was charged with kidnapping and sexual assault.

MFF reportedly allocated \$100,000 for Floyd and \$350,000 for Boswell.

Fox News reports that Boswell was previously convicted on sexual assault charges and faced prosecution by Sen. Amy Klobuchar.

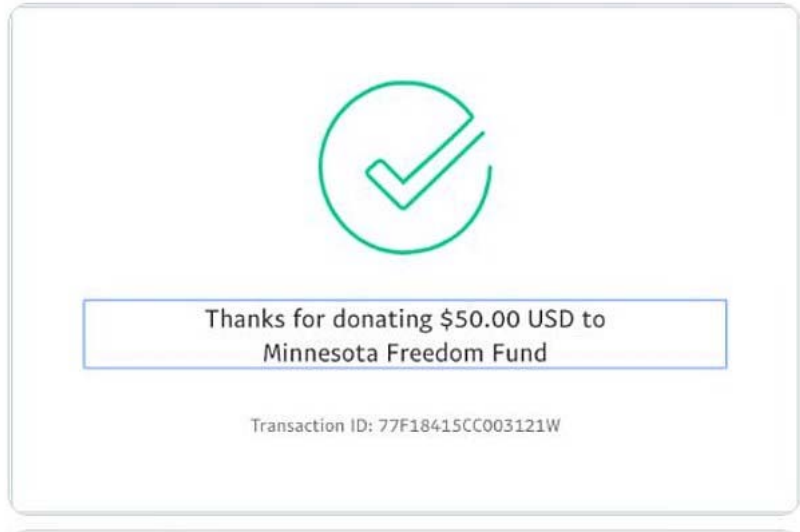
While massive criminal justice and immigration reform is needed immediately we have to do what we can now. Let's continue to support [@MNFreedomFund](#).
[#GeorgeFloyd](#)
Who's Next?



A report from Reuters said that at least 13 staffers with Joe Biden campaign publicized donations for MFF on Twitter

Cash bail is discrimination against the poor and must be abolished

Let's keep up this support for the [@MNFreedomFund](#).
Who's next?



Biden staffer: 'Cash bail is discrimination against the poor and must be abolished Let's keep up this support for the [MFF]. Who's next?'

Per a statement, the MFF does not 'make determinations of bail support based on the crimes that individuals are alleged to have committed,' MFF interim director Greg Lewin said, WaPo reports.

'We are, however, taking steps to strengthen our internal procedures for ensuring that those we bail out receive support, especially if they are in need of housing or medical treatment.

'Those processes involve renewing our commitment to listen to the communities directly impacted by our efforts, and ensuring those we bail out have the necessary support to safely return to their families and their community.'

On MFF's website, the group said that it views every individual as innocent until proven guilty.

'MFF believes that every individual who has been arrested by the police is innocent until proven guilty, and if a judge deems them eligible for bail, they should not have to wait in jail simply because they don't have the same income or resources as others with more privilege,' it read.



Joe Biden (pictured): 'The cash bail system incarcerates people who are presumed innocent. And, it disproportionately harms low-income individuals'

Bail advocates and the Biden campaign have expressed favor in ending cash bail because it oftentimes affects people of color, some of whom may not be able to afford the fee, and cause them to lose income as they await trial.

'Cash bail is discrimination against the poor and must be abolished Let's keep up this support for the [MFF]. Who's next?' one Biden campaign staffer wrote on Twitter.

'While massive criminal justice and immigration reform is needed immediately we have to do what we can now.' another wrote.

According to Biden's website, 'Cash bail is the modern-day debtors' prison. '

'The cash bail system incarcerates people who are presumed innocent. And, it disproportionately harms low-income individuals.

'Biden will lead a national effort to end cash bail and reform our pretrial system by putting in place, instead, a system that is fair and does not inject further discrimination or bias into the process.'

San Francisco Chronicle

US & WORLD // NEWS

California bail industry makes itself invisible opposing Prop. 25, ending cash bail

Bob Egelko | Sep. 22, 2020 | Updated: Sep. 22, 2020 8:09 p.m.



Longtime Al Graf bail bond company located across the street from the Hall of Justice has moved seen on Tuesday, Sept. 22, 2020, in San Francisco, Calif. Photo: Liz Hafalia / The Chronicle



Several bail bond companies seen across the street from the Hall of Justice on Tuesday, Sept. 22, 2020, in San Francisco, Calif. Photo: Liz Hafalia / The Chronicle

Proposition 25, one of the most hotly contested issues on the Nov. 3 ballot, would abolish cash bail statewide, allow tens of thousands of low-level defendants to remain free while awaiting trial, and require judges, with computer assistance, to decide whether others charged with crimes can be released safely.

The reason it is on the ballot — intervention by the bail bond industry, whose survival in California is at stake — has virtually disappeared from public view.

After the Legislature and then-Gov. Jerry Brown approved the no-bail law, SB10, in 2018, with an effective date of October 2019, bail bond companies and their insurers spent more than \$3 million to collect signatures and qualify a referendum for the ballot, putting the law on hold until voters decide whether to approve it. As of Aug. 24, according to the secretary of state's office, the American Bail Coalition had raised \$6.5 million to defeat Prop. 25, while supporters of the measure had raised \$6.8 million.

But the No on Prop 25 campaign does not mention the bail bond industry or its interests in its ballot statements or other campaign arguments, which focus on issues of public safety and civil rights — a contention that eliminating cash bail, and substituting computerized risk assessments, would increase pretrial confinement of racial minorities.

In the state ballot pamphlet that all voters receive, Alice Huffman, president of the California State Conference of the NAACP, is the lead speaker for the opponents: "Computer models may be good for recommending songs and movies, but using these profiling methods to decide who gets released from jail or who gets a loan has been proven to hurt communities of color." No on 25 also quotes law enforcement and crime victims' groups, but no one from the bail industry.

That's no accident, say advocates of the ballot measure.

"It is a calculated move by the bail industry, which people see as predatory and unfair, to make themselves as invisible as possible," said Jonathan Underland, spokesman for Yes on Prop 25.

No on Prop 25 spokesman Mike Gatto, a former Democratic assemblyman, said the campaign has not tried to conceal the sources of its funding.

In its ballot arguments, the opposition campaign said the current bail system "provides justice by ensuring people accused of a crime appear for trial and holds defendants accountable for their actions if they don't."

But according to the Yes on Prop 25 campaign, currently "the rich can go free, even when accused of serious violent crimes, while the poor stay in jail."

While other states have limited their bail requirements in recent years, Prop. 25 would make California the first state to abolish cash bail.

As of June 30, according to the Board of State and Community Corrections, county jails in California held about 61,000 inmates, of whom more than 43,000, or 71% of the total, had not been sentenced for a crime.

Some were charged with serious, no-bail offenses, but most inmates were being held because they could not afford bail, or the nonrefundable, 10% fees charged by bail bond companies — fees that totaled \$560 million statewide in 2018, according to a state report.

Under the new system, people arrested for nonviolent misdemeanors, like small-scale shoplifting, would be released within 12 hours and remain free until trial. Currently, they can be held for at least two days, or longer if found potentially dangerous. That provision would affect 142,500 people a year, according to the Public Policy Institute of California.

Those charged with capital crimes would be ineligible for pretrial release, as would people accused of domestic violence, defendants with recent serious or violent felony convictions and those who had repeatedly failed to appear in court after being granted bail in the past.

All others would be held for up to 36 hours while a judge examined their record and decided whether they should be released without conditions, freed with supervision and conditions such as drug testing or held until trial.

Those assessments are the source of the civil rights debate.

In most California counties, judges are already using computer programs to measure the potential risk some defendants would pose if released. The programs consider such factors as a defendant's criminal record, work history, housing, community ties and drug use — “data reflecting structural racism” that could result in bias against racial minorities, the Pretrial Justice Institute, a nonprofit that supports abolishing bail, reported in February.

Equal Justice Under Law, an initial sponsor of the bail-repeal legislation, has come out against Prop. 25 because of its potential racial impact.

“We need to eliminate money bail and the harmful bail industry, but there are much, much better ways of doing so,” said the group's executive director, Phil Telfeyan.

The American Civil Liberties Union, which endorsed early versions of SB10, is neutral on Prop. 25.

But supporters of the ballot measure cite a follow-up law, SB36, that requires counties to examine their risk assessments at least once every three years to determine their accuracy and any adverse impact based on gender, race or ethnicity. The state Judicial Council will oversee the process to root out any bias, said John Bauters of the advocacy group Californians for Safety and Justice, a spokesman for the campaign.

Currently, “Black and brown families typically have to expend exorbitant amounts to bail out family members,” Bauters said.

Prop. 25's backers include the Western Center on Law and Poverty, the League of Women Voters and the Anti-Recidivism Coalition, a group of former inmates and their supporters, along with the California Democratic Party and leading Democratic legislators. Opponents include the state NAACP, the Business Roundtable, the Black and Hispanic chambers of commerce, crime victims' groups and the California Peace Officers Association.

*Bob Egelko is a San Francisco Chronicle staff writer.
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Supporters, opponents argue racial preconceptions skew pretrial assessments

By: Michaela Paukner, mpaukner@wislawjournal.com September 21, 2020 10:52 am

As calls for racial justice intensify throughout the country, so have efforts to reform aspects of the criminal justice system, including pretrial-detention practices that keep hundreds of thousands of legally innocent people behind bars.

The Prison Policy Institute reported pretrial detention is responsible for nearly all of the net growth in the jail population in the past 20 years. Seventy-four percent of the U.S. jail population — 550,000 people in total — haven't been convicted or sentenced.

When deciding who should be detained and who should be released, many courts rely on pretrial-assessment systems. These are meant to offer an unbiased, objective means of estimating the chances that a defendant will fail to appear for future court dates, commit new crimes or commit new violent crimes after release.

Some argue the systems are actually making racial discrepancies worse. One such group is the American Bail Coalition, an association of national bail insurance companies and bail agents. Jeff Clayton, executive director of the coalition, said pretrial-assessments systems have racial bias built into them.

"Nobody bothered, when they built these things, to test for racial bias or think about racial bias, and now that's come to the forefront," Clayton said.

One of the most widely used systems is the Public Safety Assessment, which was developed by the Laura and John Arnold Foundation. In Wisconsin, the PSA is used in Milwaukee, Dane, Outagamie and La Crosse counties.

Advancing Pretrial Policy and Research, an initiative paid for by the PSA's developers, provides guidance to organizations on the proper use of the system. Alison Shames, co-director of APPR, said the PSA is objective.

"In terms of our validation studies that have been done to date, these show that the PSA predicts equally well for people across race and ethnicity," Shames said.

Trouble arises, though, when bias stems from the data that are coming into the system. This can happen, for instance, when the police arrest people of color at disproportionate rates, Shames said.

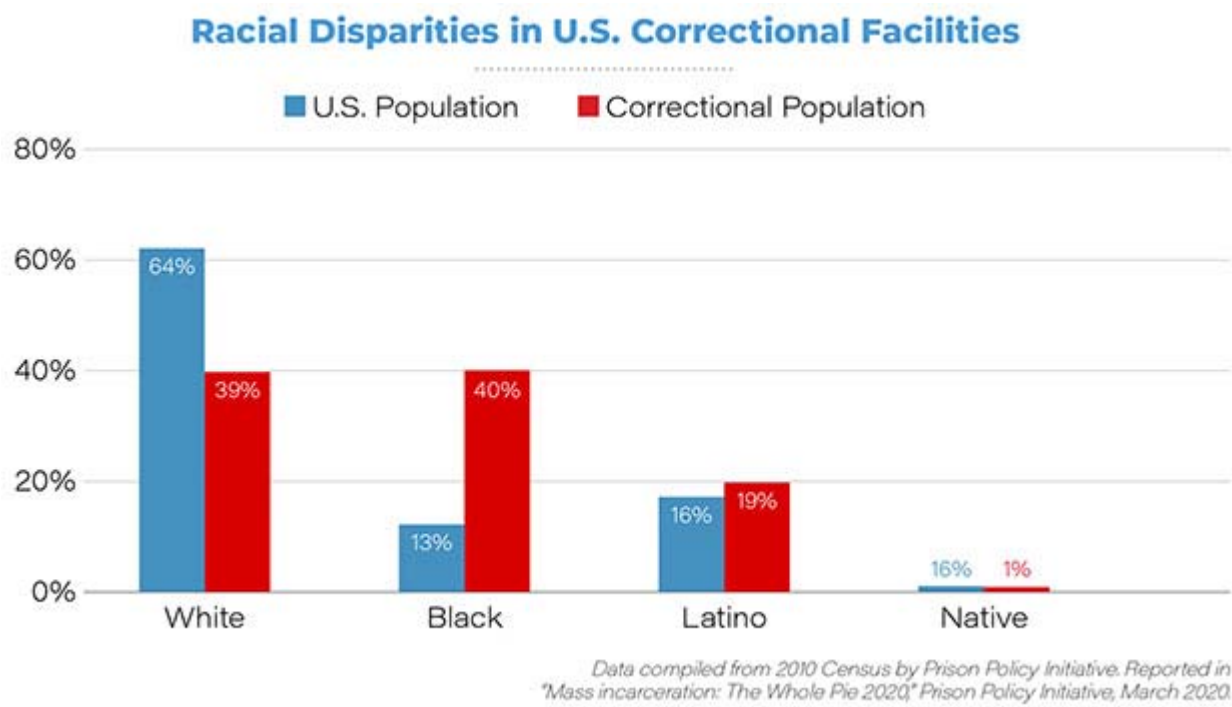
"The challenge is that bias is endemic to the criminal justice system and to the data itself," Shames said. "The data that comes into this tool has the bias of whatever the community might have."

What the PSA does

The PSA uses a defendant's criminal history to come up with a score that judges and court commissioners can use to make decisions. In doing so, it considers nine factors (see infographic).

Each is weighted and assigned points. The factors are then converted to scales of 1 to 6 for "Failure to Appear" and "New Criminal Activity" categories. A person can also be flagged for risk of new violent criminal activity.

The criteria don't change. But when a court makes use of the PSA, it also develops a custom chart to help judges and court commissioners interpret what bearing each score might have on a defendant's prospects for release.



The chart, known as the Release Conditions Matrix, varies from place to place depending on what resources can be found in each. For example, some jurisdictions may carry out criminal history checks once a month and require electronic monitoring or drug testing for certain scores.

APPR strongly recommends jurisdictions work with local policymakers and residents on the matrix. Shames said the organization also recommends every jurisdiction complete its own validation study to find out how accurate the PSA is at the local level.

APPR publishes the results of validation studies on its website. These usually vary from one place to the next, as do the reports' contents. Some counties have assessed the PSA through the lens of race, whereas others have considered populations as a whole.

Of the five studies on the website specifically analyzing the PSA, three considered the effect defendants' race might have had on outcomes. The studies found no statistical difference in the rates of pretrial release among the various groups.

PSA in practice

Clark Rodgers is one of two people in Dane County who put data into the PSA to obtain defendants' scores.

He has decades of experience working with pretrial assessments, first with U.S. Probation and Pretrial Services for nearly 23 years. He was then hired as a pretrial assessor in Dane County in 2017, when the county adopted the PSA.

Rodgers said the county runs the assessment on criminal felonies resulting from new arrests, new arrests with holds and new arrests with probation holds — although there are some exceptions.

A person is determined to have undergone a new arrest when he or she has been in custody for less than three days. On the weekend of Aug. 29-30, Rodgers said 29 of the people arrested qualified for PSAs.

An assessment typically takes 15 minutes to an hour to complete. Rodgers and Maggie Thomas, the other pretrial assessor for Dane County, use data from the Spillman jail management program, CCAP and other records databases to complete their assessments. They also obtain out-of-state records to learn whether points should be assigned.

"We try to maintain really close fidelity to what the application says," Rodgers said. "The evidence-based practices stuff relies on the fact that a program is only as good as your application to the program."

Maintaining fidelity means Rodgers sometimes has to investigate what records the PSA is using to assign a score. Bad results can occur if the system gets duplicate information for the same defendant or pull up warrants issued in error. At such times, Rodgers will turn to a reference guide listing various risk factors and outcomes as defined by the PSA researchers and Dane County Circuit Court. If questions still remain, his practice is to err in the defendant’s favor.

“If you have history that you can’t verify, then it goes to the benefit of the defendant to not score it because it gives them a lower score,” Rodgers said. “We’re not going to hold them to something that we can’t legitimately verify.”

In 2017, Dane County worked with Harvard University’s Access to Justice Lab and the Laura and John Arnold Foundation to study the PSA’s outcomes locally. Researchers finished the study in 2019 and are now compiling and analyzing the results.

Rodgers said he doesn’t track the outcomes of the PSA’s assessment — that’s done by the county’s equity and Criminal Justice Council coordinator — and he sees questions about racial disparities in outcomes as policy issues.

“Maggie and I try to keep our personal opinions out of it because we’re trying to be objective, and we take that really seriously,” Rodgers said. “We’re trying to make sure any bias we may have doesn’t affect the decisions we make.”

Predicting Pretrial Outcomes

Factors Considered by Public Safety Assessment Tool

- 1. Age at time of current arrest
- 2. Current violent offense
 - 2a. Current violent offense and whether the person is 20 or younger
- 3. Pending charge at the time of the arrest
- 4. Previous misdemeanor conviction
- 5. Previous felony conviction
 - 5a. Previous conviction (misdemeanor or felony)
- 6. Previous violent-offense conviction
- 7. Previous failure to appear in the past 2 years
- 8. Previous failure to appear that’s older than 2 years
- 9. Previous sentence to incarceration

Each factor is weighted and assigned different points according to the strength of its relationship with pretrial outcomes for failure to appear, new criminal activity and new violent criminal activity.

FTA and NCA points are converted to scales ranging from 1 to 6. Lower scores suggest a greater likelihood of pretrial success. NVCA points suggest the presence or absence of a “violence flag.”
Information from Advancing Pretrial Policy & Research website

‘Fatally flawed’ tool

Even before Dane County’s pretrial assessors start putting information into the PSA, Clayton and the American Bail Coalition believe they were set up for failure. He said the trouble lies in the algorithms that risk-assessment systems use to generate scores; they, he said, are inherently biased.

Clayton cited studies of the Colorado Pretrial Risk Assessment Tool and COMPAS Risk & Need Assessment Systems, both of which researchers had used to predict outcomes for defendants of various races. Clayton said the systems, when wrong, over-predicted risks concerning Black defendants and under-predicted risks for white defendants.

The creators of the PSA haven’t subjected the tool to such an analysis, Clayton said. Rather, they argue the tool’s accuracy is the same among racial groups.

Clayton said the PSA’s creators are OK with a tool that gets it wrong, as long as it gets it wrong at the same rate for each group of defendants.

“Because the science breaks down, there’s no scientific way for judges to then correct it,” Clayton said. “That’s why the process is fatally flawed.”

Rather than rely on pretrial-risk assessments, Clayton said judges should be using their own discretion.

“There’s been no evidence that a tool does better than judicial discretion in terms of racial bias or any other measure that you want to use,” Clayton said. “We’ve spent millions of dollars to evaluate millions of defendants, and we’re wasting that money that could be spent on diversion, drug rehabilitation, etc.”

A method for consistent decisions

But such a reliance on judicial discretion alone is exactly what the PSA is meant to avoid.

“Without (the PSA), you have a judge making a decision based on their own biases and their own subjective experience,” Shames said. “They’re looking at the same data that goes into the tool, but they’re making their own decision about it, or they’re basing something on a charge and attaching a financial condition to it that may keep someone in jail.”

Shames said the PSA shows judges that most people won’t get arrested while on release and can also be counted on to show up for their court dates — no matter their race. Even so, she said, the system is only as good as its data.

“The PSA doesn’t produce the bias,” Shames said. “It is just using data that has some bias baked into it, but it is at least giving judges information to help them make more consistent and more transparent decisions.”

Shames said APPR does make it a point to talk to users about ways that bias can be introduced by whatever data are coming into the PSA.

“No tool can eliminate the racial bias that exists in a system,” Shames said “As jurisdictions confront that and their arresting and sentencing practices are reformed, then the data will be better going into the system, and the tool will better and accurately predict.”

APPR views the PSA as one way to help improve pretrial procedures.

“What this is really about is releasing people, not detaining people,” Shames said. “What we know from the data we have from PSA results and other data across the pretrial field is people on pretrial release succeed the vast majority of the time.”

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KQED News

FORUM

Election 2020: Proposition 25 Seeks to End Cash Bail System



Hosted by [Mina Kim](#) Oct 2 at 10:20 AM



Signs advertise bail bond companies on August 29, 2018 in Los Angeles, California. (Mario Tama/Getty Images)

Proposition 25 on the November ballot seeks to end the cash bail system in California and replace it with one based on risk assessment. If passed, it would make California the first state in the nation to completely eliminate commercial bail. Prop 25 stems from Senate Bill 10, which was signed into law in 2018 by then-Gov. Jerry Brown and would have ended cash bail effective last October. Instead, a coalition against the legislation collected enough signatures to put the issue up for a vote. Proponents of Prop 25 say this would make the process more fair, where a defendant's freedom isn't dependent on their economic status. Those opposed say ending cash bail burdens police departments with ensuring defendants appear in court and takes away a person's choice to secure release from jail through bail. Forum takes up the debate.

[Bay Curious Prop Fest](#)

[KQED Voter Guide 2020](#)

Guests:

John Bauters, Budget Advocacy Director, Alliance for Safety and Justice, representing Yes on Prop 25 campaign

Mike Gatto, former Democratic State Assemblyman from Los Angeles, representing No on Prop 25 campaign

Marisa Lagos, politics correspondent for KQED and co-host of KQED's Political Breakdown show

Posted October 9, 2020

Supporters, opponents argue racial preconceptions skew pretrial assessments

By Michaela Paukner
BridgeTower Media Newswires

MILWAUKEE, WI — As calls for racial justice intensify throughout the country, so have efforts to reform aspects of the criminal justice system, including pretrial-detention practices that keep hundreds of thousands of legally innocent people behind bars.

The Prison Policy Institute reported pretrial detention is responsible for nearly all of the net growth in the jail population in the past 20 years. Seventy-four percent of the U.S. jail population — 550,000 people in total — haven't been convicted or sentenced.

When deciding who should be detained and who should be released, many courts rely on pretrial-assessment systems. These are meant to offer an unbiased, objective means of estimating the chances that a defendant will fail to appear for future court dates, commit new crimes or commit new violent crimes after release.

Some argue the systems are actually making racial discrepancies worse. One such group is the American Bail Coalition, an association of national bail insurance companies and bail agents. Jeff Clayton, executive director of the coalition, said pretrial-assessments systems have racial bias built into them

“Nobody bothered, when they built these things, to test for racial bias or think about racial bias, and now that's come to the forefront,” Clayton said.

One of the most widely used systems is the Public Safety Assessment, which was developed by the Laura and John Arnold Foundation.

Advancing Pretrial Policy and Research, an initiative paid for by the PSA's developers, provides guidance to organizations on the proper use of the system. Alison Shames, co-director of APPR, said the PSA is objective.

“In terms of our validation studies that have been done to date, these show that the PSA predicts equally well for people across race and ethnicity,” Shames said.

Trouble arises, though, when bias stems from the data that are coming into the system. This can happen, for instance, when the police arrest people of color at disproportionate rates, Shames said.

“The challenge is that bias is endemic to the criminal justice system and to the data itself,” Shames said. “The data that comes into this tool has the bias of whatever the community might have.”

What the PSA does

The PSA uses a defendant's criminal history to come up with a score that judges and court commissioners can use to make decisions. In doing so, it considers nine factors (see infographic).

Each is weighted and assigned points. The factors are then converted to scales of 1 to 6 for "Failure to Appear" and "New Criminal Activity" categories. A person can also be flagged for risk of new violent criminal activity.

The criteria don't change. But when a court makes use of the PSA, it also develops a custom chart to help judges and court commissioners interpret what bearing each score might have on a defendant's prospects for release.

The chart, known as the Release Conditions Matrix, varies from place to place depending on what resources can be found in each. For example, some jurisdictions may carry out criminal history checks once a month and require electronic monitoring or drug testing for certain scores.

APPR strongly recommends jurisdictions work with local policymakers and residents on the matrix. Shames said the organization also recommends every jurisdiction complete its own validation study to find out how accurate the PSA is at the local level.

APPR publishes the results of validation studies on its website. These usually vary from one place to the next, as do the reports' contents. Some counties have assessed the PSA through the lens of race, whereas others have considered populations as a whole.

Of the five studies on the website specifically analyzing the PSA, three considered the effect defendants' race might have had on outcomes. The studies found no statistical difference in the rates of pretrial release among the various groups.

PSA in practice

Clark Rodgers is one of two people in Dane County who put data into the PSA to obtain defendants' scores.

He has decades of experience working with pretrial assessments, first with U.S. Probation and Pretrial Services for nearly 23 years. He was then hired as a pretrial assessor in Dane County in 2017, when the county adopted the PSA.

Rodgers said the county runs the assessment on criminal felonies resulting from new arrests, new arrests with holds and new arrests with probation holds — although there are some exceptions.

A person is determined to have undergone a new arrest when he or she has been in custody for less than three days. On the weekend of Aug. 29-30, Rodgers said 29 of the people arrested qualified for PSAs.

An assessment typically takes 15 minutes to an hour to complete. Rodgers and Maggie Thomas, the other pretrial assessor for Dane County, use data from the Spillman jail management program, CCAP and other records databases to complete their assessments. They also obtain out-of-state records to learn whether points should be assigned.

"We try to maintain really close fidelity to what the application says," Rodgers said. "The evidence-based practices stuff relies on the fact that a program is only as good as your application to the program."

Maintaining fidelity means Rodgers sometimes has to investigate what records the PSA is using to assign a score. Bad results can occur if the system gets duplicate information for the same defendant or pull up warrants issued in error. At such times, Rodgers will turn to a reference guide listing various risk factors and outcomes as defined by the PSA researchers and Dane County Circuit Court. If questions still remain, his practice is to err in the defendant's favor.

“If you have history that you can’t verify, then it goes to the benefit of the defendant to not score it because it gives them a lower score,” Rodgers said. “We’re not going to hold them to something that we can’t legitimately verify.”

In 2017, Dane County worked with Harvard University’s Access to Justice Lab and the Laura and John Arnold Foundation to study the PSA’s outcomes locally. Researchers finished the study in 2019 and are now compiling and analyzing the results.

Rodgers said he doesn’t track the outcomes of the PSA’s assessment — that’s done by the county’s equity and Criminal Justice Council coordinator — and he sees questions about racial disparities in outcomes as policy issues.

“Maggie and I try to keep our personal opinions out of it because we’re trying to be objective, and we take that really seriously,” Rodgers said. “We’re trying to make sure any bias we may have doesn’t affect the decisions we make.”

‘Fatally flawed’ tool

Even before Dane County’s pretrial assessors start putting information into the PSA, Clayton and the American Bail Coalition believe they were set up for failure. He said the trouble lies in the algorithms that risk-assessment systems use to generate scores; they, he said, are inherently biased.

Clayton cited studies of the Colorado Pretrial Risk Assessment Tool and COMPAS Risk & Need Assessment Systems, both of which researchers had used to predict outcomes for defendants of various races. Clayton said the systems, when wrong, over-predicted risks concerning Black defendants and under-predicted risks for white defendants.

The creators of the PSA haven’t subjected the tool to such an analysis, Clayton said. Rather, they argue the tool’s accuracy is the same among racial groups.

Clayton said the PSA’s creators are OK with a tool that gets it wrong, as long as it gets it wrong at the same rate for each group of defendants. .

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Rather than rely on pretrial-risk assessments, Clayton said judges should be using their own discretion.

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Tuesday, October 13, 2020

Some Experts Warn That Joe Biden's Cashless Bail Policy Is A Prescription For More Anarchy

Chris Dorsey, Contributor



Experts say New York's new cashless bail system allowed rioters who were arrested to return to the streets and re-join the riots. AFP VIA GETTY IMAGES

As rioters and looters have turned many American cities into mob turf, ostensibly to express their outrage at the criminal justice system and law enforcement, Joe Biden and the Democrats' cashless bail policy has already added fuel to the infernos in places like Minneapolis and New York. Many crime experts are warning that the cashless bail approach being advanced by Biden is only going to further destabilize the criminal justice system if implemented nationwide. This monumental shift in our legal system is likely to have profound implications on public safety, and here's why it's important to understand the unintended consequences of cashless bail.

For the past few years, the drumbeat to rid our legal system of cash bail has been a Democrat talking point in an effort to end what they argue is the criminalization of poverty. Because the rich can afford their bail, and the poor cannot, Democrats contend, imposing bail is simply not a fair application of justice and must be eliminated. While that mantra plays well to the Democrat base, the reality is more complex and the outcomes are likely to be long lasting in a country where rule of law is hanging by the thinnest of threads.

To understand how cashless bail would alter our legal system, here's a look at how it currently works throughout most of the country. When a person is arrested, that person is then released in exchange for money or collateral that the court holds until all proceedings and trials surrounding the accused are complete. It's a security, generally posted by a friend or family member. It also may include putting up a piece of property that the government could

foreclose if the person flees. Or it could be a bond dealer posting bond for the charged in exchange for a fee. The court banks on the accused showing up for his or her court date to recover the bail. If they don't appear, they forfeit the bail and law enforcement or others pursue them to return them to court. Does Dog the Bounty Hunter ring a bell?



New York's top uniformed police officer, Terence Monahan, was assaulted recently while attempting to make an arrest. One of the attackers was set free under the state's cashless bail system. It's the same system that Vice President Joe Biden wants to see implemented nationwide and that has stirred increasing debate in the wake of widespread civil unrest.

PACIFIC PRESS/LIGHTROCKET VIA GETTY IMAGES

Since trials can take place many weeks or even months after arrest, if not for bail, many of those arrested—including those who may be innocent, would have to remain in jail until their trial begins, being deprived of a job and connection with family and friends at the very least. The amount of bail depends on the severity of the crime, past criminal record and risk of flight. If that risk or danger to the public is considered too high, bail might be denied altogether.

In addition, bail often consists of a litany of other non-monetary factors, like whether the accused exhibits good behavior, such as abstaining from illegal drugs or alcohol. It may also involve electronic monitors or other correctional technologies. Bail, in short, is not accurately characterized as the “cash bail system” as critics would say. A judge doesn't just assign a number on a crime and let it stand. The process of determining bail is far more complex and nuanced while being administered by elected or appointed judges who are generally the most qualified to assess a defendant's risk to society.

“In America,” says bail expert Jeffrey Clayton of the American Bail Coalition, “everyone has a constitutional right to bail—to have an amount of bail set by judges who assesses the merits of each case. The Eighth Amendment, which forms part of the Bill of Rights, provides access to bail insofar as excessive bail may not be required. Most state constitutions provide that all persons shall be bailable by sufficient sureties, an even more expansive guarantee than the federal constitution.”

But what of the Democrat's concern that the system discriminates against the poor? “The reality is that in order to prevent there being excessive bail as required by the constitution,” says Clayton, “a judge has to look at the defendant's financial resources, which they do daily across this country.”

A \$1 million bail for Martha Stewart might be a \$1,000 bail for someone who is at the poverty level. “Judges also look at three other factors,” says Clayton, “the degree to which the defendant will flee from prosecution, obstruct the criminal justice process, or be a danger to public safety. In other words, a person’s individual situation is what guides a judge’s assessment to determine bail—one size does not fit all.”

Bail reformers, however, including Joe Biden and Kamala Harris, have instead decided that no one should have to post bail at all. “Biden and Harris are saying we’re just going to ban it,” says Clayton. “If a judge finds that there is a serious risk of re-offense and flight in an arson case and imposes a \$250,000 bail, that person will walk under the so-called ‘cashless bail system.’ A judge can require all the electronic monitors he wants, but that person will not remain in jail pending trial even if they are a flight risk, danger to the community and are likely to obstruct the criminal justice process. In fact, most states are only able to deny bail in very limited circumstances—generally capital murder cases—thus nearly every criminal defendant is getting out for free under Biden’s cashless bail system. Does anyone really think most Americans favor this?”



Kentucky Senator Rand Paul was the target of rioters following President Trump's Republican National Convention speech. Many experts warn that criminal activity will spike further under Biden's proposed cashless bail system.

GETTY IMAGES

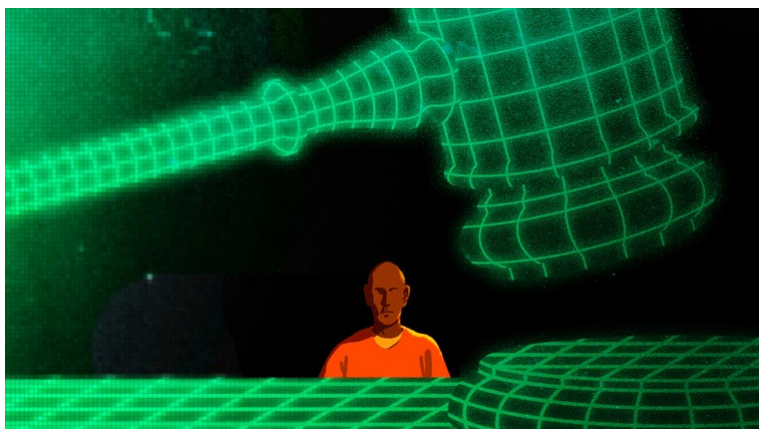
Many crime experts warn that this approach will further compromise public safety. “You can bet that this approach will only embolden repeat offenders,” says Patricia Wenskunas, Founder and CEO of Crime Survivors, a victim advocacy group. “These are the criminals who remain the greatest threat to public safety in the first place and letting them walk to victimize a community again is morally bankrupt.”

“Imagine a domestic abuser being released back into society without having to cool off before seeing a judge,” says Wenskunas. “What about repeat DUI offenders? Under cashless bail, they’ll be able to grab their keys and hit the road until they finally kill someone. What about rioters and looters? They’ll be out before the riot is over as we saw in New York where these thugs re-joined a riot after getting out on the cashless bail system implemented in that state. Rapists and sex offenders will get out for free as well. Of course, if you hit a police chief in New York City (such as the attack on NYPD Chief Terence Monahan last month), same result—get out of jail free. With all that’s happening in this country from COVID to rampant crime, people are distracted but need to wake up to the reality of what’s coming if cashless bail becomes the law of the land. If you think it’s bad now...just wait.”



California may replace cash bail with algorithms — but some worry that will be less fair

A fight over replacing bail with "risk assessment tools" has split reform advocates. Some fear the change will worsen anti-Black discrimination.



Distrust of predictive algorithms has divided the bail reform movement.

Anson Chan / for NBC News

Oct. 17, 2020, 1:30 AM PDT / Updated Oct. 17, 2020, 7:28 AM PDT

By Jon Schuppe

The movement to eradicate bail from America's justice system will face a crucial test Nov. 3, when California voters will decide whether to end the centuries-old practice of trading money for freedom and replace it with algorithms that try to predict whether defendants deserve to be released before trial.

If the ballot measure known as Proposition 25 passes, California will follow [dozens of counties, and several states](#), that have adopted "risk assessment tools" [intended to bring more fairness to the pretrial justice system](#). Traditionally, that system has relied

on the payment of cash or bonds to guarantee defendants will return to court — which keeps poor people locked up or in debt to bail bondsmen.

A victory on the referendum would come at a key moment for reform advocates, who are trying to harness public demands for change following the May 25 killing of George Floyd by Minneapolis police.

But the vote also comes at a time of rising skepticism about using mathematical formulas to determine whether someone is likely to return to court for trial or get arrested again. A growing number of researchers, computer scientists and civil rights advocates have warned that the algorithms — which use data about a person's background and criminal history to assign a risk score — could worsen discrimination. Black people, for example, are arrested at higher rates than white people, which makes them more likely to get higher risk scores, which judges could cite to keep them locked up.

Those concerns have split reform advocates in California and elsewhere, as influential groups, including the American Civil Liberties Union and the Pretrial Justice Institute, have disavowed risk assessment tools. Some have started campaigning against the California ballot measure, pitting them against former allies who see the bail reform plan as a golden opportunity to end a practice that criminalizes poverty — and putting them on the same side as the bail bond industry, which is also fighting the measure.

The California debate reflects a nationwide reckoning over the use of algorithms as reformers' "default" replacement for bail, said John Raphling, a senior researcher on criminal justice at Human Rights Watch, which opposes Proposition 25.

"Over the past few years people have begun to understand what risk assessment tools are," Raphling said. "And the more we explore them, the more we realize they're a huge danger to the goals of the bail reform movement. This is a movement to reform the pretrial system, to reduce the number of people held pretrial and reduce discriminatory impact."

The case against bail

Bail is a cornerstone of the American criminal justice system, enshrined in the Bill of Rights, entrenched in popular culture and resistant to change.

In theory, it gives most defendants, presumed innocent before trial, the chance to remain free while their cases proceed. Judges typically set payments by consulting bail schedules that assign an amount according to the charge, by examining the defendant's criminal record and home life, and by relying on their own experience and intuition. Those who can't afford to pay can seek out a bondsman willing to loan the money.

Or they can sit in jail.

The number of people behind bars awaiting trial [has exploded since the 1980s](#), reaching 470,000 in 2017. [A vast majority are charged with nonviolent crimes](#) and [a disproportionate number are Black](#). Pretrial detention can be devastating: Getting stuck in jail makes someone more likely to lose their job, their home and custody of their children. Desperate to get out, they are more likely to plead guilty to something they didn't do. That leaves them vulnerable to the lifelong economic consequences of a criminal conviction.

Philanthropic organizations, private companies, judges and lawmakers turned to algorithms as a solution, saying risk assessment tools could remove the arbitrariness, subjectivity and disparities of the existing system. The tools vary widely, but they generally use information about a person's life, demographics and prior criminal record. That has raised concerns about baked-in bias producing unfair risk scores.

One of the biggest test cases is New Jersey, [which replaced bail with a risk assessment tool](#) in 2017. The number of people stuck in jail while awaiting trial there [has dropped 27 percent](#) since then. But racial disparities [have not budged](#).

Last year, more than two dozen researchers [signed an open letter](#) warning about the use of risk assessment tools, saying they suffered from "serious technical flaws," including the reliance on criminal history data that provide "distorted" risk predictions. Another team of researchers [argued that the tools did not reduce racial disparities](#) among people jailed while waiting for trial, and may actually worsen the gaps.

Those warnings are starting to have an impact.

In January, the Ohio Supreme Court [chose not to recommend risk assessment tools in a report on bail reform](#), reportedly swayed by arguments about racial bias from the ACLU.

A month later, the Pretrial Justice Institute, a nonprofit that for years persuaded jurisdictions across the country to adopt the tools, [reversed course and disavowed them](#), saying they were "derived from data reflecting structural racism and institutional inequity."

"The idea that people are inherently risky needs to change," Meghan Guevara, an executive partner at the Pretrial Justice Institute, said. "The problem with risk assessment tools is that everyone is ranked as having some kind of risk."

Reform advocates who oppose algorithms favor alternatives that eliminate detention for most nonviolent offenses, help poor people argue for release and provide services,

from transportation to mental health care, that make it easier for people to return to court.

They lobbied for [a law that went into effect this year in New York](#), which eliminates pretrial detention and cash bail in most misdemeanor and nonviolent felony cases without using a risk assessment tool.

“New York is a model for how you take money bail mostly out of the equation,” Insha Rahman, vice president of advocacy and partnerships at the Vera Institute of Justice, said.

A split over algorithms

The shift in thinking about risk assessment tools has had a dramatic effect in California.

The tools were rising in popularity in December 2016, when Democratic state lawmakers introduced a bill that would end cash bail. [Civil rights advocates](#) saw the announcement as a major turning point in their drive to make the justice system fairer for poor people.

“It was really exciting,” Raj Jayadev, the head of a San Jose community organizing group called Silicon Valley De-Bug, recalled. “We were full of hope and ready to get to work.”

The original version of the bill did not mention risk assessment tools, but amendments gradually gave more power to the technology, as well as to judges, who could order someone held indefinitely before trial. That led many supporters, including Silicon Valley De-Bug, to withdraw their endorsements. But the bill, known as SB10, passed, and then-Gov. Jerry Brown signed it into law in August 2018.



Raj Jayadev, director of Silicon Valley De-Bug, speaks during a bail reform rally in front of the Santa Clara County Hall of Justice in February 2018 in San Jose, Calif.

Karl Mondon / MediaNews Group via Getty Images file

“SB10 put people between a rock and a hard place,” said Lex Steppling, director of campaigns and policy at Dignity and Power Now, a Los Angeles nonprofit that urged Brown to veto the bill.

Steppling called risk assessment tools “a post-modern version” of redlining, the discriminatory policies used by financial companies to designate Black neighborhoods as unworthy of investment.

The bail industry, facing extinction in California, launched a campaign to shut the new law down. It collected enough signatures to put it before voters, who will decide Nov. 3 whether it ever goes into effect.

The campaign against the measure, largely bankrolled by the bail industry, the insurance companies that finance it and the state Republican Party, has raised more than \$8 million. Proponents have raised more than \$6 million, mostly from billionaire John Arnold, whose Arnold Ventures developed a risk assessment tool used in New Jersey and dozens of jurisdictions across the United States, Los Angeles Clippers owner Steve Ballmer, the state Democratic Party, and state labor unions.

Arnold Ventures said in a statement that risk assessment tools “have been an important part of reforms that shrink jail populations without exacerbating bias.”

The reform organizations that turned against SB10 have conducted their own opposition campaign and say they have not coordinated with the bail industry. But the bail industry has cited some of the same criticism of the law, [including the reliance on risk assessment tools](#).

However, Jeff Clayton, executive director of the American Bail Coalition, which raised money for the referendum campaign, said that wasn’t the heart of the industry’s concern: “The most obvious reason we don’t like SB10 is that it eliminates bail bonding in California.”

The fight over SB10 has frustrated many of the more moderate reformers who have stuck with it from the beginning.

“For 30 years, we’ve been trying to end cash bail and now we’re in a position to end it,” Sam Lewis, executive director of the Los Angeles-based Anti-Recidivism Coalition, said. “But now, some people don’t want to end it.”

Lewis, who is Black, became a reform advocate after his release from prison in 2012 for a gang-related murder committed when he was a teenager. He sees a direct line from slavery to post-emancipation laws used to impoverish and prosecute Black people to the modern bail system.

“Why would I want to continue with a system that at least for Black people is based on racism?” Lewis said.

But Jayadev, of Silicon Valley De-Bug, says the debate has deepened his belief in changing the system locally.

His organization helps people accused of crimes in Santa Clara County gather support from family and share their struggles with judges, an approach that can dissuade judges from imposing bail. The group has also worked with public defenders to aggressively argue against pretrial detention.

Santa Clara County already uses a risk assessment tool in conjunction with cash bail, but the group’s “participatory defense” strategy adds information that makes the process more fair, Jayadev said.

That kind of hyperlocal work is the future of bail reform, he said.

“From the outside in, it looks like such a simple question, of money bail or no money bail,” he said. “But if you lift that veneer and look at what’s the goal of ending money bail, it’s trying to free people from pretrial incarceration. To keep them disentangled from the system.”

CORRECTION (Oct. 17, 2020, 10:28 a.m. ET): A previous version of this article misstated the Vera Institute of Justice’s current position on risk assessment tools. It still works with jurisdictions that have them; it has not disavowed them.



Jon Schuppe

Jon Schuppe writes about crime, justice and related matters for NBC News.



The Justice Files: No bail, no jail

Marcos Ortiz



SALT LAKE CITY (ABC4 Utah) – Dennis Skiby is accused of raping an eleven-year old girl.

He was charged in [Wasatch County](#) last month but following his initial appearance Skiby was released from jail on his own recognizance. He didn't have to post any bond.

The same thing happened for Donald Kingston. He was charged with two counts of aggravated sex abuse of a child and two counts of sodomy. He too was released from jail after posting one-thousand dollar [bail](#). Court records do not indicate if it was cash or if Kingston had to pay five percent.

Bail would normally be in the tens of thousands of dollars. But under a new law that went into effect October 1, bail is no longer set by the kind of crime committed but on one's ability to pay. Bail is now being set at much lower levels. In most instances, it capped at \$5,000.

The legislature passed the law during the 2020 session because it was widely believed that wealthy defendants were the only ones who could pay larger bail amounts while the poor sat in jail awaiting trial.

"My job description is to defend people who have no money," said [Bill Aldana](#), the Utah County public defender during a public hearing at the legislature.

Aldana like other public defenders, prosecutors, and law enforcement all supported the change in bail requirements. They believed the scales of justice were tipped against lower-income defendants.

"I have a lot of people who end up pleading guilty to a criminal offense because that's part of the plea bargain," Aldana told the legislative committee. "If you plead guilty to this, we will let you out of jail. That happens all the time. It's wrong. It shouldn't happen. This bill would help to fix it.

But three weeks after the law went into effect, some are viewing the change as a threat to public safety. Jeff Clayton, the executive director for [American Bail Coalition](#) said bad guys will be taking advantage of the change in the law.

"That's what's going to happen," he said. "If you go hit a cop you won't have to post bail. It's going to destabilize the system. Utah's attempt at justice reinvestment increased the amount of recidivism in the state of Utah. This is just going to fuel the fire.

Earlier this month, a Duchesne County man charged with domestic violence left jail on his own recognizance.

"I am going to allow your release on your own recognizance and I am going to lift the no-contact order between you and your wife," Judge Sam Chiara told Ruben Campuzano at his initial hearing.

For his victim, she has gone missing for fear he will be looking for her.

A spokeswoman for an advocacy group said they inform victims that the defendant will at some point be released from jail. Liz Sollis said that's why they advise victims to have a safety plan in place.

"The safety plan helps that individual to stay as safe as possible," said Sollis with the [Utah Domestic Violence Coalition](#). "It can also be used to keep them safe when they're not with the perpetrator."

Clayton said bail bondsmen have an advantage if they are the one's posting bail on behalf of the defendant.

“If we posted the bond we could go arrest the guy if we don’t post the bond nobody is going to look for the guy,” he said.

The coalition also thinks the new law is unconstitutional and may challenge it in court.

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Propositioned on Prop 25 - Will Voters Bail on Cash Bail?

By R.J. Johnson - @rickrthewriter Oct 20, 2020



California's Cash Bail System Eliminated By Gov. Jerry Brown

For the season finale of Propositioned, KFI's Kris Ankarlo examines the final measure on this year's ballot, which has targeted the bail industry. [Proposition 25](#) is asking voters if they want to bail on the cash bail system.

First, here's what your vote would mean according to [Ballotpedia](#):

- A "yes" vote is to uphold the contested legislation, Senate Bill 10 (SB 10), which would replace cash bail with risk assessments for detained suspects awaiting trials.

- A "no" vote is to repeal the contested legislation, Senate Bill 10 (SB 10), thus keeping in place the use of cash bail for detained suspects awaiting trials.

Proposition 25 came about after the state legislature [passed SB 10](#) in 2018 which was a bill that ensured criminal defendants would no longer have to post a cash bond to be released from jail while they waited for their case to make its way through the Justice System. In its place, a computer-based 'risk-assessment' model would be used to assess the a defendant's risk to the community. The law was temporary shelved after the bail industry in California put Prop 25 on the ballot.

Kris spoke with both sides to get a better understanding of Prop 25 in the final episode of the season.

Guests:

No

Jeff Clayton, Executive Director American Bail Coalition

Mike Gatto, Spokesman No on 25

Yes

Democratic State Senator Bob Hertzberg

Sam Lewis, Executive Director Anti-Recidivism Coalition

Photo: Getty Images

Local

Here's what Prop. 25 means in Ventura County

Megan Diskin

Ventura County Star



5 Things to Know About the Nov. 3 Election

Cheri Carlson, ccarlson@vcstar.com, 805-437-0260

A "yes" vote on Proposition 25 would allow legislation eliminating money bail to move forward in the state and replace it with a system that assesses an arrested person's flight risk and potential to commit more crime.

The proposition is a voter referendum on Senate Bill 10, which was passed by the state Legislature in 2018. The law, stalled by the ballot measure now before voters, would get rid of a system that critics say unfairly treats people

accused of crimes who don't have the financial means to get out of jail before their trial begins.

Under SB 10, money bail would be replaced by a risk assessment tool that typically involves a series of questions used to recommend jail custody or some level of community supervision based on the resulting score. In the more serious cases, the recommendation goes to a judge and he or she makes the final decision.

The referendum was backed largely by the bail industry, which would likely shut down within 20 months should the proposition pass, said Jeff Clayton, executive director of the American Bail Coalition.

The coalition, a trade association including industry professionals, supports 15,000 employees and 3,000 licensed bail agents in the state, Clayton said.

"Everyone is looking at this Nov. 3 decision as very important," said Ventura County Probation Chief Mark Varela.

If passed, the bill would not go into effect right away, Varela said.

The agency he oversees has already been using one of these tools to help determine if individuals charged with certain felonies should be incarcerated in the Ventura County jail before trial.

The program has been in place since 2013 and was expanded in 2019 after the Ventura County Superior Court was awarded \$3.7 million from the California Judicial Council. The court contracts with probation to do the pre-trial risk assessments.



Mark Varela Contributed Photo

For years, the council, which is the policy-making body of the courts, has studied the money bail system in different workgroups. A 2017 report from one of the groups called it "unsafe and unfair."

The Ventura County court was one of 16 statewide to be given a share of \$68 million to implement pilot programs for bail alternatives or work to expand existing ones.

The funding has allowed local probation officers to be embedded in the jail facility to actively conduct these assessments from 6 a.m. to 9 p.m., including holidays, said Crystal Davis, a division manager in the probation agency.

Using what's called the Ohio Risk Assessment Tool, the agency has curated data that tells an officer if a person is likely to report for the rest of their court appearances and if they're likely to commit a new offense pre-trial, Varela said.

"We're at just above 90% of individuals who did not commit new offenses while on pretrial supervision and it fluctuates between 82 and 85% that attend all their court hearings," Varela said.

Clayton, of the American Bail Coalition, said there is data that suggests the tool is faulty and racially biased. The racial bias of the Ohio Risk Assessment tool comes in the form of questions about employment, drug use and how long a person has stayed at the same residence, Clayton said.

Given the racial and social inequities in housing and job opportunities these questions can be problematic, Clayton said.

"This tool will determine the future of the pretrial system in Ventura County if Prop. 25 were to become law," Clayton said.

The use of a pre-trial risk assessment may also be inconsistent across the state because there are different tools counties can use, Clayton said.

Clayton and other critics say the legislation is not well thought out.

Jay Jordan, executive director of Californians For Safety and Justice, argues said SB 10 does not specify which tool to use. A new one can be created to weed out any issues, Jordan said.

"This is really an opportunity for us as a society to parse out any racial bias in our pretrial system," Jordan said.



Signs lead the way for voters at the Ventura County Government Center on Tuesday, Oct. 6, 2020, as election month begins. ANTHONY PLASCENCIA/THE STAR

Additionally, the Legislature has thought of ways to ensure that these risk assessment tools can evolve and remain fair. A subsequent bill called Senate Bill 36 was passed in 2019 that says if SB 10 becomes law, the government has to track and report any racial disparities as time goes on, Jordan said.

"The state legislators went through a whole process with community groups and said this is fair," Jordan said of the process to pass SB 10.

The seriousness of the accused offense should also go into account as to who stays in jail before trial, Jordan said. Some people are in jail because they can't pay \$1,000 to be released even though their charge isn't that serious, Jordan said.

On the other hand, Derek Chauvin, the Minneapolis police officer caught on video kneeling on George Floyd's neck for eight minutes, was released on a \$1 million bond, Jordan said.

The proposition is supported by the California Democratic Party, social justice groups and nonprofits like the Anti-Recidivism Coalition.

There is somewhat of a divide though among these groups aimed at social and racial justice, said Mike Gatto, a former state assemblyman and spokesman for the "No on Prop. 25" campaign.

Some law enforcement, retired judges, prosecutors and groups like Human Rights Watch and the president of the California State Conference of the NAACP have opposed it.

"There is a very broad, unheard of coalition of groups, who are opposing it. These are groups and officials who don't typically rally together, or for that matter, don't typically agree on anything," Gatto said.

There's concern that sitting judges might put too many people in jail, he said.

Ventura County Sheriff Bill Ayub said he would not issue any stance on the proposition.

Megan Diskin is a courts and breaking news reporter with The Star. Reach her at megan.diskin@vcstar.com or 805-437-0258.

Wednesday, October 28, 2020

Special Report: As jails free thousands amid COVID-19, reform push takes root

By [Linda So](#), [Brad Heath](#), [Jason Szep](#), [Ned Parker](#), [Peter Eisler](#)

WASHINGTON (Reuters) - The population in America's big jails and state prisons plunged by 170,000 this spring amid the coronavirus pandemic, Reuters has found in a survey of facilities around the country. All told, localities and states held 11% fewer inmates in their custody.



A pedestrian passes by the King County Correctional Facility in downtown Seattle, Washington, U.S., September 17, 2020. Picture taken September 17, 2020. REUTERS/Lindsey Wasson

The unprecedented mass release was a crash effort to contain the disease. But it is also providing the United States with an opportunity to experiment with a big idea: unwinding the country's signature practice of mass incarceration.

America locks away far more people – 2.1 million – than any other nation. In jails, which largely hold people awaiting trial, thousands have died behind bars without being convicted of the charges they faced, a Reuters investigation found.

With tens of thousands suddenly freed or diverted from entering jail, some governments see COVID-19 as a chance to change the policies that led many inmates to be locked up in the first place.

In February, as COVID-19 surged through a nursing home in Kirkland, Washington, in the first big U.S. outbreak, authorities assessed the risk to 1,945 inmates in the King County Correctional Facility in Seattle and the Maleng Regional Justice Center in Kent.

In March, the sheriff stopped jailing people for most nonviolent misdemeanor charges. Public defenders sought to release their clients from jail without posting bail. The sheriff suspended a work release

program, releasing inmates who worked outside the jail during the day but stayed overnight in the facility. Civil and criminal cases were frozen.

By late May, the population in the two jails had dropped to about 1,300, down by a third. King County Executive Dow Constantine says he wants to keep it that way.

“Each month that goes by where we’re able to maintain the population at 1,300 instead of 1,900 shows that this is sustainable, this is possible,” he told Reuters.

In July, Constantine announced plans to shut the 34-year-old King County Correctional Facility, a 12-floor building in downtown Seattle. Cutting the population by 600 inmates during the pandemic would save \$4 million if sustained for a year, he said.

Critics of the mass releases fear freeing inmates will lead to a surge in crime. “This is going to set us back. This is going to mean more crimes,” Sheriff Margaret Mims of Fresno County, California, said in a video posted on Facebook.

Some communities, to be sure, have begun re-filling their jails and reverting to old policies. Yet other counties are considering keeping temporary reforms in place.

Washington’s King County is weighing whether to make permanent some COVID-19-inspired booking restrictions, such as using fines for minor, nonviolent charges or only jailing people once they are convicted.

In Wisconsin, the number of inmates in Dane County’s jail dropped from 710 to 452 between mid-February and mid-May. That trend will have to be evaluated post-pandemic “in a new normal,” said Dave Mahoney, the county sheriff. “The public is saying look, your population is down, let’s learn from the forced lessons.”

Mahoney, who is also president of the National Sheriffs’ Association, said his county is considering whether more people could be released without bail, conducting more teleconferences to speed up court hearings and having judges hold court on the weekend “to decrease the number of people who arrive on Thursday and are sitting until Tuesday or Wednesday” in a cell.

In New York, the March COVID-19 releases are likely to hasten efforts to find alternatives to jail for those serving time at the Rikers Island correctional facility on minor offenses such as petty theft, drug possession, trespassing and disorderly conduct, said Elizabeth Glazer, the head of the Mayor’s Office of Criminal Justice. Such inmates are often caught in a loop between shelters, jail and emergency rooms.

In Los Angeles, county supervisors have put an initiative on the November 3 ballot to redirect 10% of unrestricted, county-generated revenue to programs supporting “alternatives to incarceration,” including mental health and job services. The measure, which would bar the use of that money for jails or policing, faces opposition from Sheriff Alex Villanueva. In a tweet, Villanueva said the move could leave the county’s streets looking “like a scene from Mad Max.” The sheriff is “against defunding public safety,” his department said.

Nationwide, a major target is the bail system. In emptying jails, many localities focused on inmates who couldn’t afford to pay bail – money posted with a court by an accused person to secure his or her temporary release before trial. U.S. jails hold more than 480,000 people awaiting trial, legally presumed innocent – about two-thirds of the jail population.

One factor keeping them in jail is the commercial bail system. Defendants who can’t afford bail turn to bail-bond agents who post the cash for their release and ensure they show up in court. In exchange, they charge a fee of about 10% of the bail. Commercial bail is legal in only one other country: the Philippines.

The American Bar Association has condemned commercial bail as discriminatory. The National Association of Counties and the International Association of Chiefs of Police have called for alternatives. Critics say it disproportionately affects Black Americans, puts a penalty on poverty and is part of a justice system biased against the poor. An alternative is the so-called personal recognizance bond – the suspect’s sworn promise to return to court.

Advocates have long pressed for bail reform, but COVID turned talk of change into a swift reality.

The Judicial Council of California issued a statewide “zero bail” policy near the start of the pandemic, effectively eliminating bail requirements for arrestees charged with misdemeanors or low-level felonies. The policy helped fuel a decline of more than 20,000 inmates in the state’s jail population before the

council rescinded it in June, saying it “may re-institute these measures if health conditions worsen or change.”

Bail and other changes led to sharp drops in jail populations in nearly every corner of the United States, in rich and poor communities, in those with large numbers of racial minorities and those with few, in counties that supported Donald Trump for president in 2016 and those that backed Hillary Clinton.

Between February and May, the number of detainees in 471 of the nation’s largest jails dropped by more than 100,000, Reuters found. In the same time, the state prison populations fell by at least 68,180. The Reuters tally doesn’t include the federal prison system, which holds fewer prisoners than jails and state prisons; comparable data wasn’t available.

In all, state prisons and the large jails surveyed by Reuters housed more than 1.5 million inmates a day in February. By May, that number had dropped to less than 1.4 million, by far the lowest point in at least a decade.

COVID FEARS

The releases were meant to slow the spread of coronavirus behind bars. Public health specialists saw jails as especially vulnerable, because they often squeeze hundreds or thousands of people into confined quarters with limited medical care. People tend to come and go from jail relatively quickly, making it easy to spread disease between the jail and community.

That makes jails potential “reservoirs of disease,” said Brendan Saloner, a Johns Hopkins University Bloomberg School of Public Health professor. And it leaves inmates as “just a sitting duck waiting for the disease.”

Through mid-June, 443 of the nation’s largest jails reported that a total of 79 inmates had died from COVID-19, the disease caused by the virus. Another 41 staff members died. The jails said they had documented a total of about 11,000 cases of the virus, though limited testing in some facilities means the figure likely is an undercount.

By comparison, at least 53,730 inmates tested positive for the virus in state prison systems, which hold convicts serving significant sentences and were less able to free people to reduce crowding. Records collected by Reuters show 551 died.

At the Clayton County Detention Center in Georgia, inmates complained this spring of cramped, unsanitary conditions, mask shortages and packed cells designed for two but holding three, according to a class-action lawsuit filed by the Southern Center for Human Rights and the American Civil Liberties Union. The lawsuit accused Sheriff Victor Hill of failing to protect inmates from an outbreak that infected more than 60 people at the 1,900-inmate facility by the end of May, the largest outbreak among Georgia’s 10 biggest jails. A month later, more than 100 had tested positive.

On March 17, as the outbreak exploded nationwide, Hill took a different tack than many other sheriffs, refusing to let inmates out unless they paid a bond. “We are not releasing anyone from jail unless they are being bonded out,” he emailed the county’s board of commissioners.

Conditions inside the jail turned grim, inmates said. Randolph Mitchell, 72, serving time for misdemeanor battery, said he paid an inmate two packets of soup in exchange for a mask made from underwear and a torn t-shirt. He felt sick May 15 and requested to see a doctor. When the medical unit called for him on May 23, he was short of breath and suffering headaches. He never saw a doctor or was given a COVID-19 test, according to sworn testimony produced in the litigation.

While he survived, at least one inmate died in June from COVID-19, said a report by jail medical contractor CorrectHealth LLC.

The Clayton County Sheriff’s Office said the inmate, 70, contracted the virus before being booked and that his death was not due to jail conditions or CorrectHealth’s care. It said the jail had taken “substantial” steps to prevent and treat COVID-19. In response to the litigation, Hill said the jail had tested and quarantined inmates to address COVID-19 and made “hygiene supplies and soap” available along with masks while restricting movement in the jail.

Some jails saw major outbreaks despite taking steps to ease crowding. In some cases, Reuters found in an examination of inmate discharges, the releases may have put the community at risk of infection.

In Decatur, Georgia, the DeKalb County Jail reported on April 27 that 13 inmates had been infected with the coronavirus. By May 4, that dropped to seven. On May 11, the jail declared itself free of the virus.

The infected inmates, however, were among 4,000 people released by the jail between March and May. The inmates were given face masks and information on local health providers. Holding an inmate cleared for release would violate an individual's rights, the sheriff's office said.

For some inmates, the releases came too late.

From February through May, the Jefferson County jail outside Denver halved its inmate population. Jose Montoya, 65, was arrested in April after failing to appear for court on charges of assault and violating a protective order. Held at the jail, he began showing COVID symptoms and was transported to a hospital on April 25 and tested positive for the virus. Three days after he was hospitalized, a judge released him on a personal recognizance bond. He died four days later.

A day later, the jail began testing inmates for COVID-19. By the end of May, 42 inmates and 13 employees had tested positive for the virus. The jail said healthcare provider Wellpath Holdings Inc provides adequate inmate care.

CRIME QUESTION

The mass releases, critics assert, put communities at risk of crime in a year when some major U.S. cities saw a rise in violence. The number of murders in the first half of the year was nearly 15% higher than the year before and serious assaults rose 5%, the Federal Bureau of Investigation reported in September. Overall numbers of violent and property crimes fell slightly.

There's no data available yet to test whether the violent crime wave is tied to the COVID releases. Release opponents cite a scattering of crimes committed by inmates. In Tampa, Florida, a man released from pretrial custody on a heroin charge in March was charged with a killing the next day. In Maryland, a man who persuaded a judge to free him because he feared COVID was charged with fatally stabbing a 63-year-old.

Orange County, California, District Attorney Todd Spitzer said the state's zero-bail order wrested control from local officials better equipped to say who should be jailed. A blanket order "protects the criminals who have repeatedly victimized the law-abiding public while failing to safeguard the innocent," he said.

While Orange County reduced its jail population by more than 45% during the pandemic, Spitzer successfully opposed no-bail releases for some inmates. He complained the pandemic was being "manipulated to allow the unnecessary release of violent and dangerous criminals."

Several criminologists noted that the overall crime rate in most cities remains lower than before the pandemic. That's true of the type of crimes associated with low-level offenders released during the outbreak, such as drug possession and petty theft. This spring and summer also saw the pandemic plunge the country into a recession and George Floyd's death trigger a wave of unrest. Those factors may have boosted violent crime as well.

"It's a real serious challenge to figure out because a lot of dramatic changes are happening at the same time," said David Abrams, a University of Pennsylvania professor of law, business economics and public policy.

A September study, sponsored by the nonpartisan Council on Criminal Justice think tank, surveyed 375 jails and found that rearrest rates didn't rise among those freed through July 20. "Rebooking rates for people released after March 16 remained below pre-pandemic rebooking rates," it concluded.

Drew McWilliams, 32, is among the released inmates.

McWilliams had three weeks left on a nonviolent misdemeanor sentence at Rikers Island when the jail released him March 26. At home, he quarantined for 14 days, avoiding his father, a cancer survivor, and his two young daughters. He has been taking courses from the nonprofit Fortune Society on becoming a guidance counselor for people getting out of jail.

"I watched certain news channels where they essentially said that they should have just left us in there to die from COVID," he said. "I want people to see that everybody that has gotten released has not been doing badly. A lot of us have been doing the right thing."

Denver prosecutor Beth McCann believes the releases appropriately cleared jails of many low-risk defendants. Her office is tracking the fates of released inmates to analyze the question more definitively.

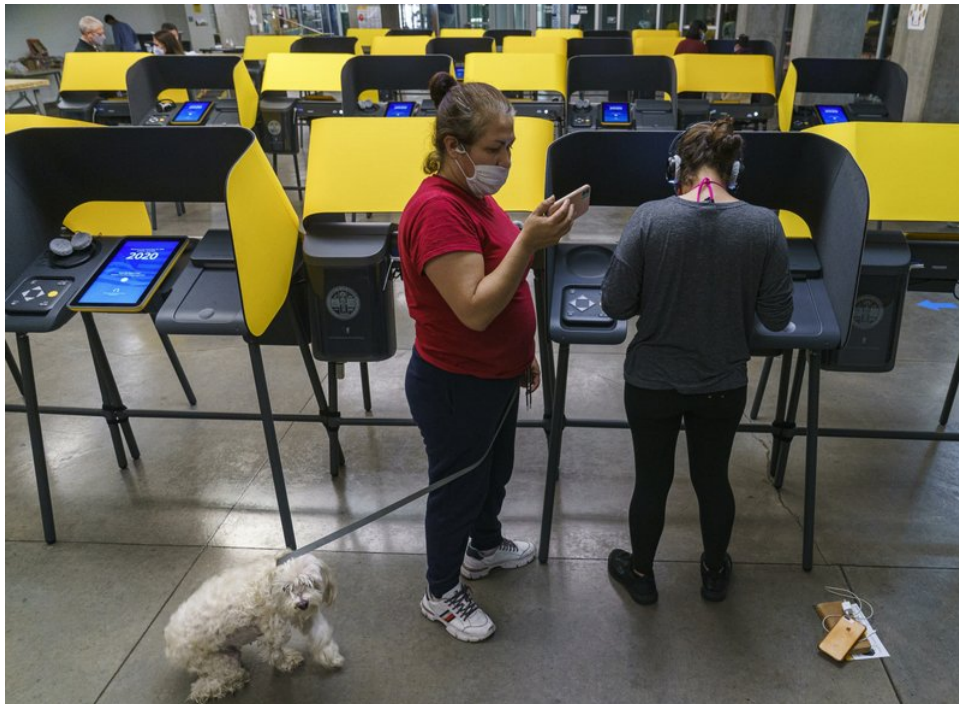
"The virus has really assisted those of us who are of the mind that we do have too many people in jail, particularly awaiting trial," McCann said.

Reporting by Linda So, Brad Heath, Jason Szep, Ned Parker and Peter Eisler in Washington and New York. Editing by Ronnie Greene
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California retains cash bail, rejects punishment rollbacks

By DON THOMPSON

November 5, 2020



First-time voter Berlyn Gonzalez votes as her mother, Claudia Gonzalez, holds the leash to her dog Nenengue, in Los Angeles on Tuesday, Nov. 3, 2020. (AP Photo/Damian Dovarganes)

SACRAMENTO, Calif. (AP) — Fresh from months of protests over the police killings of people of color and national angst over racial inequities in the criminal justice system, California voters rejected an effort to roll back reforms targeting mass incarceration and reinstate tougher criminal penalties. But they also overturned a state law that would have ended what critics call a predatory cash bail system, another change long sought by reformers.

The seeming incongruence does not undermine voters' recent shift away from the get-tough practices of the past, analysts said Wednesday.

Rather, the bail change fell victim to an unusual coalition of opponents on both the left and right, leaving supporters scratching their heads on how to move forward.

“Those attacks from both sides led to its failure, even though what we see in the state overall is a real support for progressive reforms,” said University of California, Irvine, criminologist Keramet Reiter.

More than six in 10 voters stood by reduced criminal penalties that they endorsed in previous ballot measures in 2014 and 2016. A similar margin restored voting rights to people on parole.

They rejected Proposition 20, which would have rolled back some of those provisions by again barring those convicted of certain serious offenses from earlier release. It also

would have boosted penalties for repeated retail thefts, toughened parole standards and allowed for broader DNA collections.

Recent civil rights protests may have played a role in voters' decision, said Public Policy Institute of California criminal justice researcher Magnus Lofstrom.

"It is essentially a rejection of those movements away from the changes that were implemented" in 2014 and 2016 and concern that would "potentially increase racial disparity," Lofstrom said.

Richard Temple, political consultant for the campaign led by law enforcement and victims' rights organizations, said in a statement that the measure failed because "we just weren't able to educate as many Californians as we'd hoped on how Prop. 20 would tackle violent crime and retail theft."

Voters saw a distinction between the proposed criminal penalty rollback and bail reform, said Laurie Levenson, a law professor at Loyola Law School and former federal prosecutor.

"I think most people just realized we've tried this approach to just criminalize everything, and it hasn't worked out real well — it didn't make it safer, put a lot of people in prison, it just disrupted their lives forever and it was not a path toward a better, safer society," she said.

Yet even many who oppose the cash bail system were deterred by fears that the alternative laid out in a first-in-the-nation law in 2018 could be worse, she said. Critics of the law ending cash bail worried about giving judges too much discretion and putting too much emphasis on algorithms that could keep more people behind bars in some places without removing racial disparities.

The bail industry delayed the law until voters could weigh in with Proposition 25, where 55% voted to keep the current system.

In a statement, American Bail Coalition executive director Jeffrey Clayton called the defeat "a generationally significant moment" in whether suspects retain the constitutional right to bail.

But he and former Democratic Assemblyman Mike Gatto, speaking for the broader diverse coalition of opponents, said they want to work with supporters on other bail reforms, just not its elimination.

Democratic state Sen. Robert Hertzberg, who wrote the 2018 law, blamed the defeat on its last-place position among ballot measures, confusion over whether a "yes" or "no" vote signified support for change, and the well-funded opposition. However, supporters outraised and outspent the opposition.

Voters also were confused by a judicial order setting bail at zero for lower-level offenses during the coronavirus pandemic, Hertzberg said, adding that the order lacked the safeguards of his law.

Nonetheless, he said, "I think that the bail industry is on oxygen, and there's not much oxygen left in the tank."

The state Supreme Court is considering requiring judges to take suspects' ability to pay into account when setting bail, a decision that Hertzberg said could rob the industry of its profit margin. A federal class-action lawsuit accuses the industry of anti-trust violations by colluding on setting rates. And lawmakers could consider other restrictions to the way the industry does business.

But voters' rejection makes legislative changes tougher, said Democratic Assemblyman Rob Bonta, who supports eliminating cash bail.

Lawmakers can't legally come back with a substantially similar law, since voters have weighed in. And its rejection will have a "chilling effect," he said, because some

lawmakers will feel voters have spoken and because the bail industry has proved its power.

“There’s new life breathed into their industry for the time being,” Bonta said, but “their days are numbered.”

There is broad consensus that the bail system needs to be fixed, though it’s unclear how proponents will proceed, said Lenore Anderson, founder of Californians for Safety and Justice, which backed ending cash bail and opposed rolling back criminal justice changes.

“We have seen a sea change and an enlightenment where voters are no longer falling for ... the fearmongering, they’re no longer believing that we are going to incarcerate our way to safety,” she said. “Prop. 25 notwithstanding, the message from voters is unmistakable.”

Find AP’s full election coverage at [APNews.com/Election2020](https://apnews.com/Election2020).



ELECTION 2020

Voters help big business override California lawmakers

BY LAUREL ROSENHALL
NOVEMBER 4, 2020



Special interests that are thwarted in the California Capitol attempt an end-run around new laws they don't like: ask the voters to overrule lawmakers. Image via iStock

Jeff Clayton remembers the day, two years ago, when California passed a law that would put his industry out of business in the state. The [ban on money bail](#) — which Democrats advanced saying it would

bring more fairness in the criminal justice system — would devastate companies in the American Bail Coalition that Clayton heads.

He phoned a political consultant in Sacramento, who told him: “You guys are the plastic bag guys now,” Clayton recalled.

Translation: If you want your industry to survive in California, [do what plastic companies did](#) after the state outlawed single-use plastic bags. Put up millions of dollars to ask voters to overturn the law on the ballot.

So bail companies spent \$11 million on a campaign to overturn California’s ban on cash bail — a gamble that paid off this week when voters [defeated Proposition 25](#).

“The California Legislature tends to go too far at times,” Clayton said. “As long as that stands, I think many businesses will be put in a position to have to do something like this.”

Asking voters to repeal or overhaul a law passed by the Democratic-controlled Legislature is becoming a common strategy for corporations financially threatened by progressive policies coming out of Sacramento. Ride-hailing companies succeeded at it this week, too, convincing voters to pass [Proposition 22](#) and exempt Uber and Lyft from state labor law.

Another one is already in-the-works: Tobacco companies have [launched a referendum drive](#) asking voters to overturn the state’s ban on flavored cigarettes and vaping products within days of Gov. Gavin Newsom [signing it into law](#) in August.

The repeal efforts aren’t always successful. Voters upheld the plastic bag ban in 2016, and it’s too soon to know if the tobacco measure will

qualify for the 2022 ballot. But companies can gain even when they lose, because once a referendum to overturn new laws qualifies for the ballot, they are put on hold. That can buy a targeted industry another two years to operate in California.

Historically it was uncommon for special interests to try to repeal a law by going to the ballot. (A repeal is known officially as a “referendum,” while the term “initiative” refers to proposals to change a law or pass a new one.) Over more than a century from 1912 to 2016, California voters faced [only 50 referenda](#), compared with [376 initiatives](#).

But it could become more common, given the bail industry’s success at the ballot, said Democratic political consultant Gale Kaufman.

“My guess is you’ll see more and more of that as a result,” she said. “That will be the new trick.”

Kaufman worked on the opposite sides from the bail industry and the gig companies in this election, running campaigns for Prop. 25 to maintain the ban on cash bail, and against Prop. 22 to stop gig companies from exempting themselves from a law that requires most businesses treat their workers as employees rather than independent contractors.

Labor unions largely funded the No on 22 campaign, to the tune of about \$20 million. But they were outgunned by five app-based companies — Uber, Lyft, Doordash, Instacart and Postmates — that poured more than \$200 million into passing Prop. 22, making it the most expensive ballot measure in state history.

“They are writing their own law and spending what it takes to win,” Kaufman said.

Businesses see it differently. From their perspective, spending at the ballot keeps their businesses alive and allows Californians to serve as a check on labor unions and other progressive interests that hold too much sway in the Legislature. Democrats now have such a huge majority that they can completely sideline Republicans, and sometimes the more moderate members of their own party. That power has led Democrats to overreach, said Rob Lapsley, president of the California Business Roundtable.

"As the Legislature's makeup is getting much more progressive it's getting much more out of step with Californians when it comes to business and jobs," he said.

"And you're going to see business defend itself, unequivocally, whether they have to do it in court, or whether they have to do it at the ballot box. If this is the way it's going to go, then there will be more use of that in the future."



Laurel Rosenhall

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Laurel covers California politics for CalMatters, with a focus on power and personalities in the statehouse. Her stories explain political dynamics in the Capitol and examine how money, advocacy and relationships... [More by Laurel Rosenhall](#)



Californians Approve Parolee Voting Rights, Bring Back Cash Bail

9:29 p.m. ET
Nov. 4, 2020



Frederic J. Brown/AFP via Getty Images

A ballot measure to abolish cash bail in America's most populous state failed Tuesday as California voters rejected Proposition 25 by a wide margin, according to results by the secretary of state's office.

The vote is a big win for the bail bond industry and its backers, which spent some \$3 million to defeat Proposition 25.

"The bail agents and licensed insurance corporations who funded this effort always knew that the issue was far greater than just the future of their industry," said Jeffrey Clayton, executive director of the American Bail Coalition. "It was about the fundamental principles behind every citizen's rights. Voters have declared that they will not tolerate any effort to deny them the fundamental constitutional right to bail."

The defeat is a loss for criminal justice reformers who've long argued that basing pretrial freedom on access to money blatantly discriminates against the poor and disproportionately impacts people of color.

The win overturns a state law signed in 2018 that made California the first state in the U.S. to eliminate money bail. California's legislation would have given judges the discretion, aided by a computer algorithm, to decide if a defendant should be let go before trial.

If Proposition 25 had passed, people arrested for nonviolent misdemeanors would have been released within 12 hours and remained free until trial. Current law allows defendants to be held for at least two days if a judge believes the person to be potentially dangerous. Those charged with murder or domestic violence, as well as violent felons who'd repeatedly failed to appear in court, would have been ineligible.

A major factor in the measure's defeat was a sharp split on the issue among progressives. Some argued that such pretrial algorithms, computer tools that look at factors like a person's work history, past crimes and drug use, have racial disparities baked into them. The ACLU of Southern California, for example, opposed the measure, saying it would replace money bail with risk-assessment tools "that are racially and socioeconomically biased."

That was a main argument of the bail industry too. As the No on Prop 25 website put it, "Imagine trying to help a loved one accused of a crime secure their release in order to answer the charges against them – and having their freedom depend on computer algorithms and predictive models that have been shown to be racially biased."

The algorithm tool "was a major contributor to the left's hesitancy to embrace Prop. 25," says Max Szabo, a former assistant district attorney in San Francisco who's now a consultant and adviser on criminal justice and political campaigns. "There were a lot of folks on the left who thought that the initiative would actually lead to more people being detained pretrial."

This loss now largely puts the issue back in the hands of local district attorneys. Szabo and others call the current money bail system unjust and unsafe: "We have to figure out, where do we go from here? What is the better solution?"

On the winning side for progressive justice reformers in the state, California voters overwhelmingly approved Proposition 17, which automatically restores voting rights to people on parole. The vote means California joins similar efforts in Colorado, Nevada, New York and New Jersey to restore voting rights to the formerly incarcerated.

"Expanding the franchise to persons on parole strengthens democracy," said Nicole Porter of the Sentencing Project, which supported Proposition 17. "No one should lose their voting rights because of justice involvement. Many citizens with felony conviction histories pay taxes and participate in their communities. They should never lose their voting rights," she said.

Like money bail, reformists say the data overwhelmingly show that felony disenfranchisement policies disproportionately affect people of color.

— Eric Westervelt

Los Angeles Times

CALIFORNIA

California's highest court could still curtail cash bail, upheld by the state's voters



The Quick Bail Bonds building on Vignes Street across from Men's Central Jail in Los Angeles in 2005.
(Robert Gauthier / Los Angeles Times)

By [MAURA DOLAN](#), [PATRICK MCGREEVY](#)
NOV. 4, 2020 | 3:18 PM | **UPDATED** 5:31 PM

Amid divisions among criminal justice reformers, voters have rejected a ballot measure to end cash bail in California, but the state's highest court will probably have the final word.

[A case pending before the California Supreme Court](#) would require judges to consider a defendant's ability to pay bail before requiring it. The court's decision likely would be based on the California Constitution, making it harder to overturn at the ballot box.

The bail industry spearheaded [Proposition 25](#), a referendum on a law enacted by then-Gov. Jerry Brown to replace bail with a risk assessment system. The industry hoped voters would reject the law, which passed over its objections.

A liberal coalition supporting the end of cash bail fractured at the last minute when the bill was amended to allow judges more flexibility in deciding who must remain behind bars. Some criminal defense lawyers worried that algorithms to be used to assess a defendant's risk of flight or re-offending might themselves be biased and lead to defendants unnecessarily being kept in jail. A split produced an unlikely but informal alliance against the measure: the bail industry, members of law enforcement and the American Civil Liberties Union of Southern California and Human Rights Watch.

"The bottom line is I think there was enormous confusion among people," UC Berkeley law school dean Erwin Chemerinsky said.

The bail debate is not going away, though. Legislators may introduce a new bill, and the California Supreme Court is ready to weigh in.

"Cash bail is on life support," said Robert Weisberg, co-director of the Stanford Criminal Justice Center. "It is going to disappear one way or the other. It may just go out with a whimper and not a bang."

California Chief Justice Tani Cantil-Sakauye, who heads the state high court, supported the bail law that voters opposed in Proposition 25. A study by a group of judges she appointed also concluded the bail system unfairly hurt the poor.

The bail case before the court, [In re Humphrey](#), stems from a 2018 San Francisco-based Court of Appeal decision that required judges to consider whether a defendant could afford bail and weigh nonmonetary alternatives.

"If the court determines that petitioner is unable to afford the amount of money bail it finds necessary to ensure petitioner's future court appearances," wrote 1st District Court of Appeal Justice J. Anthony Kline, author of the decision, "it may set bail at that amount only upon a determination by clear and convincing evidence that no less restrictive alternative will satisfy that purpose."

The California Supreme Court, which already has allowed the decision be cited as precedent statewide, is expected to uphold the ruling.

Kirk Jenkins, an appellate lawyer and court analyst, said he did not believe the court would be swayed by voters' decision on Proposition 25.

"If they think the precedents require the constitutional ruling," Jenkins said, "I don't think they'll hesitate to affirm the Court of Appeal and essentially negate the proposition."

The Court of Appeal's decision stemmed from a bail hearing for Kenneth Humphrey, a retired shipyard laborer, who was charged with robbery in San Francisco in 2017 after being accused of stealing \$5 and a bottle of cologne from a neighbor. Humphrey was 63 at the time, the neighbor, 79.

Humphrey had a criminal record, and a trial judge initially set bail at \$600,000. The judge eventually reduced it to \$350,000, which Humphrey still could not afford. Bail bonds companies require defendants to pay up to 10% of the bail amount even when the defendants show up to court. Humphrey did not have the \$35,000 to obtain bail.

Following the ruling, Humphrey was [released with an ankle monitor](#).

Legislators who coauthored the bail law voters rejected indicated Wednesday that they were considering whether to introduce new bail legislation next year, but have not decided yet to do so.

"The arc of the moral universe is long, but it bends toward ending cash bail," said state Sen. Bob Hertzberg (D-Van Nuys), the primary author of the measure, Senate Bill 10. "Millions of dollars from the predatory bail industry may buy them some time, but it can't overpower our movement toward justice."

Sen. Scott Wiener (D-San Francisco), a coauthor of SB 10, called its repeal by the failure of Proposition 25 "absolutely devastating."

"Money bail is classist and racist — no one should ever be held in jail or released based on how much money they have," Wiener said Wednesday. "We cannot give up this fight, and we won't give up."

A new bill might take into account the objections of liberals who opposed SB 10.

"Prop. 25 would have eliminated money bail across the state of California by enacting a discriminatory risk assessment system in its place," said Summer Lacey, director of

criminal justice at the ACLU of Southern California, on Wednesday. “Risk assessment tools have proven to be racially and socioeconomically biased.”

The American Bail Coalition, which sponsored the No on Proposition 25 campaign, praised the election result.

“Voters have declared that they will not tolerate any effort to deny them the fundamental constitutional right to bail,” said Jeffrey J. Clayton, executive director of the American Bail Coalition, the organization that sponsored the referendum effort.

“We hope the state respects the will of the voters and instead looks to other reasonable pathways to bail reform.”

Staff writer Anita Chabria contributed to this report.



California voters reject computerized no-money bail system; affirm state's fundamental right to bail

By: [courtesy](#) / On: November 5, 2020 / In: [Community](#) / Tagged: [American Bail Coalition](#), [bail](#), [Proposition 25](#)

California's Proposition 25 went down to a resounding defeat in Tuesday's general election. The fight over the state's move to a no-money bail system, which dragged on for four years, was rejected by voters despite major support by wealthy backers.

The measure had its roots in Senate Bill 10, which was pushed through by state lawmakers two years ago without input from the public. That piece of legislation was built on the argument that if a person arrested for a crime is unable to afford their bail, it is fundamentally wrong. Therefore, a computer algorithm should be used instead to determine who gets out with no monetary conditions at all — and who is forced to remain in jail with no further recourse.

A referendum effort was subsequently launched, teaming up groups not traditionally aligned, in an effort to defeat the bill which would have eliminated the constitutional right to bail. They included the NAACP, Crime Survivors Resource Center and Crime Victims United, along with a large number of law enforcement organizations.

In addition, the passage of Proposition 25 would have implemented preventative detention policies based on the results of a computer algorithm. Opponents were also concerned that innocent defendants would be caught-up in a dragnet of supervision created by local governments.

"This is a generationally significant moment in the history of the Eighth Amendment. Voters have declared that they will not tolerate any effort to deny them the fundamental constitutional right to bail," said Jeffrey J. Clayton, Executive Director of the American Bail Coalition, the organization that sponsored the referendum effort. "It was truly an honor to fight shoulder to shoulder with civil rights groups and law enforcement against

this misguided legislation. Voters recognized that while we don't often agree on criminal justice reform, when we do, it's because all of us consider watching out for the best interests of the people our highest priority."

The Yes on Proposition 25 campaign was spearheaded by several top-level public officials, most prominently state Senator Robert Hertzberg (D-Van Nuys). A cavalcade of billionaires hopped aboard the bandwagon, as did public employee unions eager to pocket union dues from the creation of county-level jobs supervising innocent defendants. Few if any progressive civil rights groups, including the ACLU, supported Proposition 25 or Senate Bill 10. Despite their continuing argument that the current criminal justice system is in need of reform, none believed that Senate Bill 10, or by extension, Proposition 25, offered a viable solution.

The effort for the referendum drive, as well as the No on Proposition 25 campaign, was funded largely by private bail agents and the insurance companies that back them.

"The bail agents and licensed insurance corporations who funded this effort always knew that the issue was far greater than just the future of their industry. It was about the fundamental principles behind every citizens' rights," Clayton said. "When you can overrule a bill supported and passed by the legislature, governor and chief justice by appealing directly to the people — a difficult, if not nearly impossible task — it proves that we were on the right side of history all along."

With the defeat of Proposition 25, the outlook for bail reform in California is unclear. What seems certain for the immediate future is that the state legislature cannot move once again to eliminate monetary bail.

Clayton said, "We hope the state respects the will of the voters, and instead, looks to other reasonable pathways to bail reform. We look forward to being a part of that conversation as we move forward."

About the American Bail Coalition

The American Bail Coalition is dedicated protecting the Constitutional right to bail and the promotion, protection and advancement of the surety bail profession in the United States. Comprised of the nation's largest surety insurance companies, ABC works with local communities, law enforcement, legislators and other criminal justice stakeholders to utilize its expertise and knowledge of the surety bail industry to develop more effective and efficient criminal justice solutions.

This article was released by the [American Bail Coalition](#).

CALIFORNIA★POLITICAL **REVIEW**

CALIFORNIA VOTERS REJECT COMPUTERIZED NO-MONEY BAIL SYSTEM

November 5, 2020 By Stephen Frank

Thanks to the voters of California computers will not make the decision as to which alleged criminal gets to go back on the streets without bail. Instead, it will be a real live judge, a human making the decision. As it should be.

“The measure had its roots in Senate Bill 10, which was pushed through by state lawmakers two years ago without input from the public. That piece of legislation was built on the argument that if a person arrested for a crime is unable to afford their bail, it is fundamentally wrong. Therefore, a computer algorithm should be used instead to determine who gets out with no monetary conditions at all — and who is forced to remain in jail with no further recourse.

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Another loss for George Soros and the Crime Industry. The people deserve to be protected, not lockdown. Watch as Soros uses DA's to open the jail doors—or just keep criminals from jails and trials. California is as safe as any Middle East war zone.

**CALIFORNIA VOTERS REJECT COMPUTERIZED NO-MONEY BAIL SYSTEM;
AFFIRM STATE'S FUNDAMENTAL RIGHT TO BAIL**



Photo credit: Michael Coghlan via Flickr

Jeffery Clayton, American Bail Coalition, 11/4/20

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system, which dragged on for four years, was rejected by voters despite major support by wealthy backers.

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Record Searchlight

PART OF THE USA TODAY NETWORK

Props 20 and 25 failed. What does that tell us about criminal justice reform in California?

Matt Brannon

Redding Record Searchlight

With the failure of Propositions 20 and 25, California voters committed to some of the state's criminal justice reforms but declined to go a step further by eliminating cash bail.

The rejection of Proposition 20 wasn't close. About 62% of voters disapproved of the measure that would've harshened punishments on some crimes and made fewer prisoners eligible for early parole.

The decision on Proposition 20 was welcomed by Jay Jordan, executive director of Californians for Safety and Justice.

“(Voters) wanted to choose rehabilitation and prevention over punishing people,” Jordan said. “The story of last night was essentially, we are not going backwards.”



While he interpreted Proposition 20's results as a stamp of approval on the reforms, Jordan said the rejection of Proposition 25 tells a different story. He

blamed the loss on a campaign by interest groups to tarnish the measure, mentioning the surety and bond industries.

“This is what happens when you have \$10 million to spend and have a couple voices to side with you like Alice Huffman,” he said.

Huffman is the state's NAACP president who campaigned against Proposition 25, arguing that it would lead to discrimination against minorities. CalMatters reported that her consulting firm had taken money from ballot measure campaigns.

But that wasn't the only activist group trying to sink the measure. The Los Angeles Chapter of Black Lives Matter also told people to vote against Proposition 25, saying it would "subject defendants to racial profiling."

The American Bail Coalition called Proposition 25's argument against cash bail "fundamentally wrong" in a statement celebrating the rejection.

So why did the latter measure fail in a state that typically endorses such reforms? In some cases, it simply takes voters a lot to say yes to a proposition, according to Charles Turner, a Chico State University professor in political science.

“It's easy for a voter to say ‘I'm not sure about this. It might be risky, so I'm gonna vote no,’” Turner said.

While he also mentioned the concerns of discrimination, he said another factor working against Proposition 25 may have been “ballot fatigue.”

“By the time people got to Prop. 25, the very last proposition, it's a lot of mental effort to keep track of what all these things mean,” Turner said.

As for Proposition 20, Turner said the measure might have fared better if it were more straightforward. He said the proposition didn't stick to one thing, so it gave voters opportunities to find a reason to vote against it.



What the results mean for one California county

California's rejection of Proposition 20 was by no means unanimous.

Shasta County, tucked in the rural North State, was one of eight counties to vote in support of the harsher criminal penalties. Complaints of crime and a lack of accountability for criminals are often a top issue among county residents, and those complaints aren't likely to die down after Tuesday's results.

Sheriff's Capt. Gene Randall, who oversees the county jail for the sheriff's office, said he doesn't expect any abrupt changes to jail operations. He said the facility has overcrowding because of past reforms that Proposition 20 sought to undue. That's because more people with shorter convictions were now serving them in local jails in an effort to reduce prison overcrowding.

The result was a reduction of bed space at the jail for local pre-trial detainees, Randall said.



Meanwhile, Randall said the failure of Proposition 25 allows the jail to move forward with testing a new risk assessment tool. He said the new tool, VPRAI, now in a trial phase, will help the jail figure out if it is over-incarcerating.

While Proposition 25 received support from 44.5% of the state, it earned just 25.5% in Shasta County.

Another person involved with incarceration in the county is Faydra Koenig. Koenig founded the Commons, a non-profit organization meant to support families who have a loved one in jail or prison.

She said she thinks Proposition 25 didn't pass statewide not because of a lack of support, but rather of a lack of information and attention due to the presidential race and COVID-19.

"Considering there is a contentious election and a rampant public health issue, I'm not sure there was much loss or gain either way," Koenig said of the state's reform efforts after the proposition results. "People tend to focus on the most

important things in their lives at the moment, and there is a lot competing for their attention.”

Still, she has reason for optimism, saying that getting reforms on the ballot increases awareness.



“(It) provides an opportunity to make important and necessary changes in the criminal justice system.

And while both Propositions 20 and 25 failed, Turner’s time studying politics tells him things can change down the line.

“Always with propositions, we can see them coming back another time,” Turner said. “We haven’t seen the last of those ideas. “

Matt Brannon covers politics, the criminal justice system and breaking news for the Record Searchlight. Follow him on Twitter [@MattBrannon](https://twitter.com/MattBrannon) RS. Support local coverage and keep up with the North State for as little as \$1 a month. [Subscribe today](#).

Thursday, November 5, 2020

A look at how proposition 25 could have impacted bail bond companies

by Erin Roney, Eyewitness News



BAKERSFIELD, Calif. (KBAK/KBFX) — Under [proposition 25](#), no one would pay bail to be released from jail before their trial, but instead released on the spot or be released based on an assessment of how likely a person is to not show up to court or commit another crime.

“People don’t really want to give up the right to bail,” says Jeff Clayton with the [American Bail Coalition](#). “It really wasn’t about the defendant, it was about the defendant’s friends and family.”

The prop did not pass and many bail bondsmen and their employees in California might be feeling a little grateful for that.

“The bail agents get to continue their jobs, around 15,000 jobs around the state, to help families and friends get people out of jail,” says Clayton.

Looking from a different perspective, for those who don’t have anyone to bail them out or the money to do so, prop 25 would have made it easier for those who pose less of a risk to get out of jail while awaiting trial. Jeff clayton with the American Bail Coalition says making bail goes beyond a cash value.

“A computer would have decided if you got out or not, not whether you had support in the community and someone to vouch for you, which has been the history of the bail system,” says Clayton.

Clayton agrees there needs to be bail reform but feels prop 25 wasn’t going to provide that.

“We need a more individualized and immediate consideration of bail in California. I think it will lower the bails and make a more sensible system.”

Friday, November 6, 2020

CALIFORNIA

California's far-left activists shocked they beat Prop 25. What's the future of bail now?

BY JASON POHL

Lex Steppling and his team of criminal justice activists knew they wanted to undo California's law abolishing cash bail. They said it would merely replace one oppressive system with another, worsen racial inequities and give too much power to algorithms and judges.

They were convinced they were right. But he didn't think they'd actually [defeat Proposition 25](#) — especially not by a nearly 11-point margin.

"We didn't expect to win, let alone win by so much," Steppling said in an interview. "I'm still wrapping my head around that part."

The victory marked a surprising end to an unlikely marriage between an extreme "abolitionist" wing of the criminal justice reform movement and California's billion-dollar bail bond industry. Traditionally enemies, together they undid a years-long effort from the California Legislature that could have created one of the most significant justice system changes in a decade.

The longstanding system of cash bail will remain in place indefinitely. As Steppling and others say they plan to push for county-by-county changes, the type of top-down change that would have followed Proposition 25 is on hold as uncertainty sweeps through the now-fractured criminal justice reform movement.

Advocates said Wednesday they were "poised to build our system anew." But those advocates are facing severe criticism, including from more moderate justice reformers. They're also feeling the pressure of a familiar problem: Once something is repealed, what exactly do you replace it with — and how?

Steppling is the co-chair of the No on Proposition 25 campaign and an advocate with Dignity and Power Now, a Los Angeles nonprofit that has sued the sheriff's office over jail conditions, rallied against new jail construction, and pushed for taking funding away from police departments. They want to see radical, grassroots improvements to the justice system.

"Our fixation is not simply on bail," Steppling said, criticizing the existing power that judges and police have. "We want to make a transformative change that disables the drivers of pretrial incarceration."

Proposition 25 — and SB 10, the legislation it was a referendum on — came after years of work in the California Legislature to make that change. Besides doing away with cash bail, it would have brought mandatory audits to measure racial biases. The changes, which lawmakers could adjust as needed, could have opened a window into an often opaque system of justice where little information about cash bail bonds is ever made public.

By Thursday evening, roughly 55.6% of the counted vote was in support of keeping the current cash bail system indefinitely. No county south of Santa Cruz in the Bay Area supported Proposition 25. It was [a resounding defeat](#) and in sharp contrast to two other justice system measures that passed — one [expanding voting rights to people on parole](#) and another blocking tough-on-crime proponents' plan to make [stiffer penalties for low-level offenses](#).

"It was a case of the kind of far left and far right converging and not a lot of space left in the middle to get rid of cash bail," said Keramet Reite, a criminologist at UC Irvine.

Proposition 25's failure will likely cast a long shadow on justice reform in California. Lawmakers are barred from taking another crack at cash bail that is similar to the one voted down Tuesday. They might also be hesitant to take it up again, saying the voters have already spoken.

That has longtime advocates on edge.

"You fear what you think you can't change," said Sam Lewis, head of the Anti-Recidivism Coalition, among the most active criminal justice reform organizations in California. Lewis, who was released in prison in 2012 after serving 24 years, was among the fiercest supporters of Proposition 25. He said he thought the killing of George Floyd would have made people want to dismantle the system now more than ever.

"Instead," Lewis said, "we kept a system that's steeped in racism and criminalizes poor, black and brown people because we were afraid."

WHAT HAPPENS NEXT?

Steppling's organization says it has a plan to improve the jail system from the ground up. It's unclear how exactly that plan would roll out and how much it could be deployed in counties across the state.

The replacement, he said, "does not begin and end in Sacramento."

"If we let our sense of possibility be mediated by electeds, we would never get anywhere," Steppling said. "We have to create a roadmap to something different, and then actually organize and do that work and build community pressure."

Steppling said his group will work to replicate programs in other places like the one they helped [push in Los Angeles County](#) calling for [jail diversion programs](#).

County-by-county, they plan to push [a plan called Preserving the Presumption of Innocence](#). The plan calls for non-law-enforcement groups to evaluate people's risk, counties to collect better data, and law enforcement to only detain people accused of serious or violent felonies. It is modeled, in part, from the bail reform law voters shot down Tuesday.

Sen. Robert Hertzberg, D-Los Angeles, who wrote SB 10 and has championed bail reform, was unconvinced that Steppling's work would be successful. He said his yearslong effort that culminated with Proposition 25 was, in fact, a grassroots effort with people across the state. It prompted new county-level public safety assessment programs and was the type of sweeping change to state law that is needed for a broken system.

"The only way to solve this is at a statewide level," he said. "You can't fix the bail system on a county by county basis. It just doesn't work. It has no legal authority."

State-level bail fights aren't over. The California Supreme Court has a case pending that would force judges to consider a defendant's ability to pay bail before setting it. The [Humphrey case](#) could force a reckoning about how high bail is set, eroding some of the industry's profits. It's why Hertzberg said that, despite Proposition 25 failing, the bail industry "is on life support and the oxygen is running out of their tank."

Any grassroots successes would also be scattered, said Jonathan Simon, a professor at UC Berkeley who studies law enforcement and was against Proposition 25. A so-called progressive prosecutor movement, like in San Francisco and Los Angeles along with other local reforms in the years since public safety realignment could prompt the kind of change Steppling described.

San Francisco District Attorney Chesa Boudin has [committed to new policies](#) targeting racial disparities in the justice system that include ending gang enhancement charges and charges where police find contraband through "pretextual" traffic stops. And in Los Angeles, George Gascón is [leading in the race to head the largest district attorney's office](#) in the country on a [progressive platform](#) that includes eliminating cash bail.

"There's plenty of opportunity for bail reform at the local level," Simon said. "Counties can decide to adopt some level of this."

It also means that conservative counties, such as Kern in Southern California or those in the north state — can ignore the changes altogether, indefinitely.

“That’s going to mean that some counties have some really regressive arrest and bail policies,” Simon said.

A LONG FIGHT TO TUESDAY

For decades, California lawmakers have mulled ways to dismantle the cash bail industry, which is seen widely as unfairly harming lower-income families and people of color.

Judges generally follow what’s called [a bail schedule](#), a preset grid that has dollar amounts attached to specific crimes. Those who do not have the money to post bond wait in jail for their case to end, whereas those with resources can get released.

Bail bond companies fill the gap in the middle for people who don’t have thousands of dollars on hand to pay to get out. Bond companies charge a fee — typically 10% — and arrange with the courts to have the defendant released from jail. The money is nonrefundable.

“We do not want bail being used as a form of punishment,” said Topo Padilla, president of the Golden State Bail Agents Association who has long said the problem is not with his industry but with local justice systems. “We do not want bail to be used to keep people in jail longer.”

[Research](#) has [found](#) minority communities and even families of [domestic violence survivors](#) can end up bearing [disproportionate costs](#) of cash bail. A [Sacramento Bee investigation](#) last month found that domestic violence survivors are paying cash to get their family members released from jail — a cruel twist in a pandemic that has devastated local economies.

Former Gov. Jerry Brown signed a bill into law in August 2018 that would have brought a sledgehammer to the system. To address concerns from groups like Steppling’s about racial bias in the risk assessments, lawmakers passed SB 36. They vowed to keep chipping away at the system to make things just and fairer.

Hertzberg wrote the 2018 law and last year’s addition aimed at repairing a broken system that benefits the bail industry.



Gov. Jerry Brown hands a copy of a bill to end bail he signed to state Sen. Bob Hertzberg, D-Van Nuys, who along with Assemblyman Rob Bonta, D-Alameda, right, co-authored the measure, during a signing ceremony, Tuesday, Aug. 28, 2018, in Sacramento, Calif. The bill makes California the first state to eliminate bail for suspects awaiting trial. Also seen are Assembly Speaker Anthony Rendon, D-Lakewood, left, Senate President Pro Tem Toni Atkins, D-San Diego, second from left, and California Supreme Court Chief Justice Tani Cantil-Sakauye, second from right, (AP Photo/Rich Pedroncelli) Rich Pedroncelli AP

“It may not be perfect, but we have the ability to come in and fix it. Let’s just get rid of the bail industry,” Hertzberg said in an interview Wednesday. “As much as they wanted to say they were for justice, they were for greenbacks, they were for money. That’s all they cared about. And that’s their business, I understand it, but it doesn’t make it right.”

That system fought back. Faced with the prospect of [being outlawed](#), the state’s 3,200 licensed bail bondsmen and 7,000 employees gathered signatures for a referendum. With ample support from other groups, they collected enough signatures to put the [future of the law up to the voters](#).

Soon came the unlikely marriage.

“Proposition 25 was not going to help get people out of jail, it was going to keep people in jail,” Steppling said. “And in some cases, many cases, thousands of cases, keep people in jail with no way out.”

“It was truly an honor to fight shoulder to shoulder with civil rights groups and law enforcement against this misguided legislation,” Jeffrey J. Clayton, Executive Director of the American Bail Coalition.

Reliable research about the effects of bail reform is hard to come by, in part because getting access to data is so fragmented.

But Heather Harris, a researcher at the nonpartisan Public Policy Institute of California who has extensively studied bail said roughly 11% of Latinos and 2% of African Americans would have likely been released sooner than they currently are.

While some people might have been detained slightly longer, the vast majority of suspects would have been released faster — risk assessments could propagate existing inequities, but those could be mitigated with other policies.

“Although our research does not address the question of whether risk assessment would have led to racially biased pretrial release decisions,” Harris reiterated Wednesday, “it does indicate that replacing money bail with a structured release process, would have mitigated some racial disparity in pre-arraignment release.”

‘IT’S JUST EASIER TO SAY NO’

As summer turned to fall this year, doubts were cropping up inside the Proposition 25 camp about whether California voters would stand against a well-heeled cash bail industry. They were getting increasingly worried that Steppling’s coalition of far-left activists would sow confusion about the existing problems with cash bail and the way to fix it.

Polling from the UC Berkeley Institute of Governmental Studies found that 39% of likely voters would keep the new law in place while 32% would vote to maintain cash bail, the [LA Times reported Oct. 1](#). Nearly three-in-10 people were undecided.

Confusing wording and the potential for ballot fatigue heightened the anxiety for supporters.

“No question. It was a tough fight for us going in,” Hertzberg said. “I think it was a lot of confusion. You get a lot of drop off when you get to the end of the ballot. And it’s just easier to say no.”

Meanwhile, Steppling’s coalition of nonprofits grew and the bail industry watched the division grow. The ACLU of Southern California said it was opposed, as did Human Rights Watch, the California Black Chamber of Commerce, and the California NAACP State Conference.

The ruckus did more than simply split voters — it fractured the criminal justice reform movement, said Lewis, with the Anti-Recidivism Coalition. That tension might not disappear any time soon, even while all activists agree on the need to get rid of cash bail somehow.

“We don’t try to take over the leadership and try to say we know what’s best,” said Lewis with the Anti-Recidivism Coalition. “There’s segments that caused this split. ... Was it a perfect bill? No. But it was the first step at really ending cash bail.”



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They were convinced they were right. But he didn't think they'd actually [defeat Proposition 25](#) — especially not by a nearly 11-point margin.

"We didn't expect to win, let alone win by so much," Steppling said in an interview. "I'm still wrapping my head around that part."

The victory marked a surprising end to an unlikely marriage between an extreme "abolitionist" wing of the criminal justice reform movement and California's billion-dollar bail bond industry. Traditionally enemies, together they undid a years-long effort from the California Legislature that could have created one of the most significant justice system changes in a decade.

The longstanding system of cash bail will remain in place indefinitely. As Steppling and others say they plan to push for county-by-county changes, the type of top-down change that would have followed Proposition 25 is on hold as uncertainty sweeps through the now-fractured criminal justice reform movement.

Advocates said Wednesday they were "poised to build our system anew." But those advocates are facing severe criticism, including from more moderate justice reformers. They're also feeling the pressure of a familiar problem: Once something is repealed, what exactly do you replace it with — and how?

Steppling is the co-chair of the No on Proposition 25 campaign and an advocate with Dignity and Power Now, a Los Angeles nonprofit that has sued the sheriff's office over jail conditions, rallied against new jail construction, and pushed for taking funding away from police departments. They want to see radical, grassroots improvements to the justice system.

"Our fixation is not simply on bail," Steppling said, criticizing the existing power that judges and police have. "We want to make a transformative change that disables the drivers of pretrial incarceration."

Proposition 25 — and SB 10, the legislation it was a referendum on — came after years of work in the California Legislature to make that change. Besides doing away with cash bail, it would have brought mandatory audits to measure racial biases. The changes, which lawmakers could adjust as needed, could have opened a window into an often opaque system of justice where little information about cash bail bonds is ever made public.

By Thursday evening, roughly 55.6% of the counted vote was in support of keeping the current cash bail system indefinitely. No county south of Santa Cruz in the Bay Area supported Proposition 25. It was [a resounding defeat](#) and in sharp contrast to two other justice system measures that passed — one [expanding voting rights to people on parole](#) and another blocking tough-on-crime proponents' plan to make [stiffer penalties for low-level offenses](#).

"It was a case of the kind of far left and far right converging and not a lot of space left in the middle to get rid of cash bail," said Keramet Reite, a criminologist at UC Irvine.

Proposition 25's failure will likely cast a long shadow on justice reform in California. Lawmakers are barred from taking another crack at cash bail that is similar to the one voted down Tuesday. They might also be hesitant to take it up again, saying the voters have already spoken.

That has longtime advocates on edge.

"You fear what you think you can't change," said Sam Lewis, head of the Anti-Recidivism Coalition, among the most active criminal justice reform organizations in California. Lewis, who was released in prison in 2012 after serving 24 years, was among the fiercest supporters of Proposition 25. He said he thought the killing of George Floyd would have made people want to dismantle the system now more than ever.

"Instead," Lewis said, "we kept a system that's steeped in racism and criminalizes poor, black and brown people because we were afraid."

WHAT HAPPENS NEXT?

Steppling's organization says it has a plan to improve the jail system from the ground up. It's unclear how exactly that plan would roll out and how much it could be deployed in counties across the state.

The replacement, he said, "does not begin and end in Sacramento."

"If we let our sense of possibility be mediated by electeds, we would never get anywhere," Steppling said. "We have to create a roadmap to something different, and then actually organize and do that work and build community pressure."

Steppling said his group will work to replicate programs in other places like the one they helped [push in Los Angeles County](#) calling for [jail diversion programs](#).

County-by-county, they plan to push [a plan called Preserving the Presumption of Innocence](#). The plan calls for non-law-enforcement groups to evaluate people's risk, counties to collect better data, and law enforcement to only detain people accused of serious or violent felonies. It is modeled, in part, from the bail reform law voters shot down Tuesday.

Sen. Robert Hertzberg, D-Los Angeles, who wrote SB 10 and has championed bail reform, was unconvinced that Steppling's work would be successful. He said his yearslong effort that culminated with Proposition 25 was, in fact, a grassroots effort with people across the state. It prompted new county-level public safety assessment programs and was the type of sweeping change to state law that is needed for a broken system.

"The only way to solve this is at a statewide level," he said. "You can't fix the bail system on a county by county basis. It just doesn't work. It has no legal authority."

State-level bail fights aren't over. The California Supreme Court has a case pending that would force judges to consider a defendant's ability to pay bail before setting it. The [Humphrey case](#) could force a reckoning about how high bail is set, eroding some of the industry's profits. It's why Hertzberg said that, despite Proposition 25 failing, the bail industry "is on life support and the oxygen is running out of their tank."

Any grassroots successes would also be scattered, said Jonathan Simon, a professor at UC Berkeley who studies law enforcement and was against Proposition 25. A so-called progressive prosecutor movement, like in San Francisco and Los Angeles along with other local reforms in the years since public safety realignment could prompt the kind of change Steppling described.

San Francisco District Attorney Chesa Boudin has [committed to new policies](#) targeting racial disparities in the justice system that include ending gang enhancement charges and charges where police find contraband through "pretextual" traffic stops. And in Los Angeles, George Gascón is [leading in the race to head the largest district attorney's office](#) in the country on a [progressive platform](#) that includes eliminating cash bail.

"There's plenty of opportunity for bail reform at the local level," Simon said. "Counties can decide to adopt some level of this."

It also means that conservative counties, such as Kern in Southern California or those in the north state — can ignore the changes altogether, indefinitely.

“That’s going to mean that some counties have some really regressive arrest and bail policies,” Simon said.

A LONG FIGHT TO TUESDAY

For decades, California lawmakers have mulled ways to dismantle the cash bail industry, which is seen widely as unfairly harming lower-income families and people of color.

Judges generally follow what’s called [a bail schedule](#), a preset grid that has dollar amounts attached to specific crimes. Those who do not have the money to post bond wait in jail for their case to end, whereas those with resources can get released.

Bail bond companies fill the gap in the middle for people who don’t have thousands of dollars on hand to pay to get out. Bond companies charge a fee — typically 10% — and arrange with the courts to have the defendant released from jail. The money is nonrefundable.

“We do not want bail being used as a form of punishment,” said Topo Padilla, president of the Golden State Bail Agents Association who has long said the problem is not with his industry but with local justice systems. “We do not want bail to be used to keep people in jail longer.”

[Research](#) has [found](#) minority communities and even families of [domestic violence survivors](#) can end up bearing [disproportionate costs](#) of cash bail. A [Sacramento Bee investigation](#) last month found that domestic violence survivors are paying cash to get their family members released from jail — a cruel twist in a pandemic that has devastated local economies.

Former Gov. Jerry Brown signed a bill into law in August 2018 that would have brought a sledgehammer to the system. To address concerns from groups like Steppling’s about racial bias in the risk assessments, lawmakers passed SB 36. They vowed to keep chipping away at the system to make things just and fairer.

Hertzberg wrote the 2018 law and last year’s addition aimed at repairing a broken system that benefits the bail industry.



Gov. Jerry Brown hands a copy of a bill to end bail he signed to state Sen. Bob Hertzberg, D-Van Nuys, who along with Assemblyman Rob Bonta, D-Alameda, right, co-authored the measure, during a signing ceremony, Tuesday, Aug. 28, 2018, in Sacramento, Calif. The bill makes California the first state to eliminate bail for suspects awaiting trial. Also seen are Assembly Speaker Anthony Rendon, D-Lakewood, left, Senate President Pro Tem Toni Atkins, D-San Diego, second from left, and California Supreme Court Chief Justice Tani Cantil-Sakauye, second from right, (AP Photo/Rich Pedroncelli) Rich Pedroncelli AP

“It may not be perfect, but we have the ability to come in and fix it. Let’s just get rid of the bail industry,” Hertzberg said in an interview Wednesday. “As much as they wanted to say they were for justice, they were for greenbacks, they were for money. That’s all they cared about. And that’s their business, I understand it, but it doesn’t make it right.”

That system fought back. Faced with the prospect of [being outlawed](#), the state’s 3,200 licensed bail bondsmen and 7,000 employees gathered signatures for a referendum. With ample support from other groups, they collected enough signatures to put the [future of the law up to the voters](#).

Soon came the unlikely marriage.

“Proposition 25 was not going to help get people out of jail, it was going to keep people in jail,” Steppling said. “And in some cases, many cases, thousands of cases, keep people in jail with no way out.”

“It was truly an honor to fight shoulder to shoulder with civil rights groups and law enforcement against this misguided legislation,” Jeffrey J. Clayton, Executive Director of the American Bail Coalition.

Reliable research about the effects of bail reform is hard to come by, in part because getting access to data is so fragmented.

But Heather Harris, a researcher at the nonpartisan Public Policy Institute of California who has extensively studied bail said roughly 11% of Latinos and 2% of African Americans would have likely been released sooner than they currently are.

While some people might have been detained slightly longer, the vast majority of suspects would have been released faster — risk assessments could propagate existing inequities, but those could be mitigated with other policies.

“Although our research does not address the question of whether risk assessment would have led to racially biased pretrial release decisions,” Harris reiterated Wednesday, “it does indicate that replacing money bail with a structured release process, would have mitigated some racial disparity in pre-arraignment release.”

‘IT’S JUST EASIER TO SAY NO’

As summer turned to fall this year, doubts were cropping up inside the Proposition 25 camp about whether California voters would stand against a well-heeled cash bail industry. They were getting increasingly worried that Steppling’s coalition of far-left activists would sow confusion about the existing problems with cash bail and the way to fix it.

Polling from the UC Berkeley Institute of Governmental Studies found that 39% of likely voters would keep the new law in place while 32% would vote to maintain cash bail, the [LA Times reported Oct. 1](#). Nearly three-in-10 people were undecided.

Confusing wording and the potential for ballot fatigue heightened the anxiety for supporters.

“No question. It was a tough fight for us going in,” Hertzberg said. “I think it was a lot of confusion. You get a lot of drop off when you get to the end of the ballot. And it’s just easier to say no.”

Meanwhile, Steppling’s coalition of nonprofits grew and the bail industry watched the division grow. The ACLU of Southern California said it was opposed, as did Human Rights Watch, the California Black Chamber of Commerce, and the California NAACP State Conference.

The ruckus did more than simply split voters — it fractured the criminal justice reform movement, said Lewis, with the Anti-Recidivism Coalition. That tension might not disappear any time soon, even while all activists agree on the need to get rid of cash bail somehow.

“We don’t try to take over the leadership and try to say we know what’s best,” said Lewis with the Anti-Recidivism Coalition. “There’s segments that caused this split. ... Was it a perfect bill? No. But it was the first step at really ending cash bail.”



Prop 25 Expert: The eligibility of voters to refuse bail is determined by computers

Reporter Zheng Aotian/Report from Los Angeles 2020-11-07 02:00



Proposal 25 failed to pass, and the California bail system and prison system still have problems. (LATimes)

In the November 3 election, California voters decided whether to cancel Proposal No. 25 of the California bail system. Judging from the number of votes, it did not get the support of more than half of voters to cancel. This result, the United States (American Bail Coalition) Bail Union policy director Clayton (Jeffrey J. Clayton) said that this proved that the people of California do not want their eligibility for bail decisions handed over to the computer, and tend to choose a more progressive bail System reform plan.

Proposal No. 25 is based on a bill passed in 2018 "Replace the bail system with risk assessment." A vote of Yes represents support, and a vote of No represents opposition. This bill is one of California's most ambitious judicial reform plans in recent years, allowing judges to determine bail eligibility based on bail applicants' evasion risk and their assessment of public safety. The bill proposes to replace the bail system with a bail risk assessment system (Risk Assessment System) composed of data algorithms and judge opinions. The risk assessment data algorithm will analyze the personal information of the applicant for bail, as well as the criminal history

and other factors, and finally combine the judge's opinion to make a bail decision.

Clayton said that because the algorithm takes into account factors such as bail applicants' tax records and whether they own real estate, there is a risk of systematic discrimination against low-income residents and new immigrants. At the same time, it also deprives residents of the freedom to obtain bail according to their own wishes, so it is difficult to get the majority of support.

Nevertheless, supporters of referendum No. 25 believe that California's bail system makes bail a privilege for the rich. In this case, many suspects who have committed crimes such as rape and child molestation are free of bail with the help of Bail Agents because of their wealthy families. At the same time, many petty criminals from low-income communities cannot pay because they cannot pay. Stumbled to jail after bail. In this case, the effectiveness and fairness of the cash bail system has caused many residents to question.

In response to these disputes, Clayton also admitted that the current bail system in California has the problem of excessive bail and understands the society's attitude towards the bail industry (Bail Industry). However, he believes that instead of completely overthrowing the cash bail system, California should gradually lower the bail threshold so that first offenders or minor offenders from low-income communities can qualify for bail. This move not only guarantees the legal rights of criminals and maintains public security, but also solves the current huge and bloated prison system in California.

Regarding the future of California's bail system, Clayton said that the American Bail Alliance will continue to cooperate with governments and law enforcement agencies at all levels to continue to promote the reform of California's bail system.

San Jose Mercury News

Prop 25 failed, but California's fight over cash bail is far from over

Nico Savidge

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SAN JOSE, CA - OCTOBER 12: A Bad Boys Bail Bonds' truck and an All-Pro Bail Bonds' store sign are seen on Oct. 12, 2020, in San Jose, Calif. (Dai Sugano/Bay Area News Group)

California voters last week rejected a proposition to abolish the state's cash bail system. But no one — not activists who say keeping people behind bars because they can't afford to post bail is unjust, nor the bail bonds industry that poured millions of dollars into the campaign to defeat the ballot measure — believes the fight is over.

Instead the focus is shifting to the Supreme Court of California, where civil rights groups will argue that it is unconstitutional to continue a system that favors people who have money and punishes those who don't. That case could allow the court's seven justices to order their own reworking of the bail system, perhaps as soon as the next several months.

"The question is going to be: What is the appetite of the California Supreme Court?" said David Ball, a Santa Clara University law professor who opposes money bail. "The bail issue is alive and well."

At the center of the case is Kenneth Humphrey, a San Francisco retiree who was held in jail because he couldn't post the \$600,000 bail a judge assigned him. His charge? Robbing his elderly neighbor in a residential hotel for \$5 and a bottle of cologne in May 2017. The amount was later lowered to \$360,000, but it was still far more than he could afford, even with a bail bond.

The San Francisco Public Defender's Office and nonprofit Civil Rights Corps challenged Humphrey's bail, and an appellate court sided with them in 2018. The ruling upended the state's bail system, requiring judges to consider a defendant's ability to pay when setting bail, as well as whether they could safely be released without putting up money. After a year behind bars, Humphrey was freed.

The state Supreme Court agreed to review the case next. But the proceedings were essentially put on hold because California's Legislature at the time was separately considering a law that would have eliminated the cash bail system and rendered the case moot.

In the more than two years since, lawmakers passed SB10 abolishing cash bail, and then-Gov. Jerry Brown signed it into law in August 2018. It was supposed to take effect in October 2019, but a challenge from the bail industry blocked it pending the results of Proposition 25, a referendum to uphold the new law.

With the measure's failure, David Ettinger, an appellate lawyer who tracks the state Supreme Court, said the justices could move quickly on the Humphrey case, hearing oral arguments perhaps as soon as the first week of December. The court typically issues a ruling within 90 days of oral arguments.

"It would not be a surprise to see it on the December calendar," Ettinger said.

Civil rights groups and activists have long abhorred the cash bail system, saying it allows wealthy defendants to walk free and await trial from home while poor, disproportionately Black and Latino defendants remain behind bars. They stay in jail not because they pose a threat to the public but because they can't scrape together enough money to get out.

Critics, including some law enforcement groups and the bail bonds industry, say requiring someone to post bond is the best way to ensure they return to court for the rest of their case.

But while the idea of eliminating cash bail has moved firmly into the mainstream of the criminal justice reform conversation — President-Elect Joe Biden endorsed it during his campaign — there is little consensus on what ought to replace it.

Prop. 25 and SB10 would have created a new system releasing most misdemeanor defendants without bond. In more serious cases, the legislation gave judges, aided by algorithms meant to assess the risk each defendant poses to their community, substantial authority in deciding who would be released.

That plan outraged some longtime advocates for abolishing cash bail, who said the algorithms would only replicate the injustice of the existing system. Several pulled their support for the legislation and actively opposed the ballot measure.

Now advocates see a new opportunity in the Humphrey case.

"I don't think we needed Prop 25. to defeat the bail bonds industry — Humphrey can do it," said San Francisco Public Defender Mano Raju, whose office was one of those that soured on the risk assessment system.

There are signs the justices are open to arguments against cash bail: Chief Justice Tani Cantil-Sakauye worked with Brown and the Legislature in the crafting of SB10 and after its passage called money bail "outdated, unsafe, and unfair." And in August, the Supreme Court ordered that the 1st District Court of Appeal's ruling in Humphrey's favor be made binding, which the high court had initially blocked from going into effect while the case was under review.

Raju said he hopes the Supreme Court embraces that ruling, which, while not eliminating the cash bail system entirely, aims to ensure people are not kept behind bars solely because they cannot afford bail.

If the Supreme Court doesn't take meaningful action, Raju said, "We can do it with better legislation that doesn't rely on these harmful algorithms."

Jeff Clayton, executive director of the American Bail Association, said he expects the justices to scrutinize bail schedules, which assign a default bail amount for each criminal charge, perhaps moving to lower the bail amounts on those schedules or eliminate them entirely. Such changes, Clayton said, "would not be fatal to bail."

Clayton, whose organization sponsored the campaigns to challenge SB10 and defeat Proposition 25, said the 56 percent of voters who opposed the measure were sending a message that they don't want to throw out the option of money bail altogether.

"People did not want to give up their right to bail out their friends and family," Clayton said. "I don't think going to the 'no money bail' system is going to happen — that (was) the point of the referendum."

Analyzing the risk

In Colorado, some say pretrial risk assessments are biased, others say they're better than nothing

By [Angela K. Evans](#) - November 5, 2020



Let's start with a theoretical scenario: Al Capone and Mother Theresa are both arrested and charged with committing murder. Based on that charge, bond is set at \$5 million for each of them. Given what we know about them, who do you think would be seen as a lower risk to the community if released? Probably Mother Theresa. But who do you think is going to be able to pay bail and be released? Definitely Al Capone.

It's a conundrum that has plagued the criminal justice system in the U.S. for decades, as high incarceration rates have been driven by pretrial detention, i.e., holding people awaiting trial.

But what if there was a way to review someone's personal history — previous interactions with law enforcement and courts, involvement with drugs and alcohol, living situation, etc. — in order to assess their risk if released?

That's the idea behind pretrial risk assessments, which are used within the criminal justice system to determine if and under what conditions someone can be released into the community while they wait for the judicial process to play out. In Colorado, such a tool has been used by many jurisdictions since 2013 in an attempt to lower pretrial jail populations, largely supported by district attorneys, pretrial services departments, prominent legislators and others. However, there's been increasing concern among criminal and racial justice advocates across the country that these assessments reproduce certain biases — especially toward people of color and those experiencing homelessness — that exist within the current criminal justice system.

In response to a recent study of the Colorado Pretrial Assessment Tool (CPAT) that analyses this bias and recommends a revised tool, ACLU Colorado argues the use of such a tool leads statewide pretrial reform efforts in the wrong direction. What has been more effective, they say,

is some of the simple policies local jails and prisons have used in response to COVID-19, essentially halving the state's incarcerated population in six months.

"Risk assessment tools have not decreased the pretrial population," Rebecca Wallace, senior staff attorney and senior policy counsel of ACLU Colorado, says. "They haven't worked. It is a crutch. It has the aura of objective decision-making that is actually a recreation of the biases that are baked into the current system, but we take those biases and we make them look objective, and that is actually more harmful."

Pretrial detention is considered a major contributor to the nation's high rates of incarceration, growing 433% between 1970 and 2015 according to the Vera Institute of Justice. People detained while awaiting trial make up two-thirds of local jail populations across the country, the vast majority of whom are charged with nonviolent crimes.

"Taking away somebody's liberty by the government is the most serious control mechanism that we have," Wallace says. "And it should be reserved for the most serious potential risks."

Seen as a reform leader, Colorado adopted a law in 2013 that provided guidelines for the way in which judges are supposed to set bail, and encouraged, though didn't require, jurisdictions to use pretrial services and risk assessments in order to prevent unnecessary pretrial detention. This led to the development of the CPAT, which uses an algorithm based on a list of 12 factors to determine a risk score of one through four. It scores individuals based on whether or not they are currently housed or own a cell phone, whether they rent or own their home or contribute to residential payments, whether they have past or present problems with alcohol or receive mental health treatment, previous jail or prison sentences or pending cases and the age of first arrest.

That risk score is then presented to a judge, sometimes with additional information, to determine conditions of release, which can range from personal recognizance (PR) bonds to a variety of community supervision methods like drug and alcohol monitoring, mental health treatment and even employment help.

"The goal here is to ensure that people are not fleeing the jurisdiction and they're going to come back to court and also that they're not posing an immediate risk to the community," says Boulder County District Attorney Michael Dougherty, who generally supports the use of CPAT, especially when compared to leaving these determinations up to an individual judge's discretion, as was the practice previously. "But when one is trying to predict human behavior in any walk of life, I think that's extremely difficult to do. And there's no perfect instrument for that."

In Boulder County, the average length in the pretrial system is about six months, although it can vary widely from three months to two years, according to Monica Rotner, division manager for Boulder County Community Justice Services, which includes the pretrial program.

Of the 10,000 or so people that are booked at Boulder County Jail each year, Rotner says about half are interviewed and assessed, the rest are either on hold from another jurisdiction or not "bond eligible" for a variety of reasons.

"There's no doubt that assessment tools of all sorts maintain the bias that exists in our society," Rotner says, but that's why Boulder County bond commissioners — those tasked with assessing pretrial defendants — have an entire matrix of factors to use, and don't rely solely on the CPAT. "We believe strongly in combining it with an in-person interview and also being able to override those scores, so we never make a recommendation to the court that's based alone on the CPAT," she says.

In an effort to more fully understand the impact of the CPAT, the state, with some additional resources from the University of Northern Colorado (UNC), funded a recent study from UNC researchers Victoria Terranova and Kyle Ward.

To assess for bias in CPAT, they relied on self-reported data about race, ethnicity, sex and residential status — whether a person was housed or homeless when arrested.

"We didn't find differences where being black versus being white led you to a higher score," Ward says. "Where the differences lie was when we dove into those false positives and false negatives."

The false positive rate being the rate at which those given a high-risk score don't actually have a high-risk outcome, such as failing to appear in court or being rearrested when released on bond.

"Our bias analysis focuses on the false positive rate, because from that kind of perspective, if you think about it, those who are assigned as a high risk but may not result in a high-risk outcome are the ones who are receiving the detrimental consequences of being justice-involved," Terranova says.

The researchers found that the CPAT in its current form had a higher false positive rate for black defendants versus white, and unhoused defendants versus housed. Of the 12 factors in the original CPAT, Terranova and Ward found prior violent arrest and questions about residential status to be the most problematic. Their study includes a recommendation for an updated risk assessment tool based on their research, the CPAT-R, that only considers nine factors.

"To say that a tool is actually biased I would say is a bit of a stretch just solely relying on the false positive rate," Terranova says. "Being a descriptive statistic, there really isn't a threshold for what would be biased." In essence, there isn't statistical certainty that biases exist within the tool.

But in a letter to the researchers, Wallace and Aaron Horowitz, deputy chief analytics officer for ACLU National, argue that the discrepancy in false positive rates (FPR) show that bias does exist. "FPR inequality is a well-established way to determine if predictive bias exists in predictive models," Horowitz writes in an email to *Boulder Weekly*. "Given the magnitude of the differences between false positive rates among homeless versus housed people and black people versus white people, we have no reason to doubt these disparities are real and meaningful."

And that makes the use of the CPAT and even the CPAT-R problematic in assigning risk to pretrial defendants, according to its detractors.

"The new study indicates that CPAT has racial bias," Maureen Cain, legislative and policy director for the Office of the Colorado State Public Defender, says. "That's a given. I think every risk assessment tool by the nature of the factors that correlate to risk, you're going to find over-representative numbers for over-policed communities."

According to the Pretrial Justice Institute (PJI), a Baltimore-based think tank that long supported the use of pretrial risk assessments, these tools should no longer be considered a solution for equitable pretrial justice systems. In a February 2020 position brief, PJI argues that regardless of scientific methodologies, every pretrial risk assessment is inherently flawed because every risk assessment uses data that reflects the "structural racism and institutional inequity" in our current court and law enforcement policies and practices. "Use of that data then deepens the inequity," PJI argues.

Risk assessment tools are built upon historic policing and criminal justice data, which is problematic, Wallace says, because these systems tend to be inherently biased against communities of color and those living in poverty. For example, the age of first arrest (not conviction) is the most heavily weighted factor in most risk assessments, but that correlates with over-policed communities where young people can be arrested for low-level offenses like smoking in the park.

"The analytics community has a term for it: garbage in, garbage out," Wallace says. "Your outputs for an algorithm are only as good as the data that's going into it."

This also comes into play when looking at pretrial defendants experiencing homelessness, those who are often incarcerated for low-level offenses directly tied to their lack of housing, such as sleeping on a park bench, violating camping and smoking bans or urinating in public.

"We know that these individuals are being viewed as extremely high risk under the risk assessment tool. If they go back outside, they get released, they're going to sleep on a park bench again," Wallace says. "This is not a useful tool and leads to thinking these are risky populations when they are not risky at all."



In general, the pretrial population is very low risk, as less than 2% will be charged with a violent offense if released, according to the UNC study. And yet, the risk assessment tool still divides people into low-risk and high-risk categories, which is misleading, Wallace says.

The tool “forces a certain number of people into these high-risk categories that by and large are not high risk,” she says.

“We believe it over-defines risks — the people in the highest risk category in the instrument really are people who will substantially more likely than not, not re-offend, not fail to appear,” Cain adds. “And if they re-offend, the most common re-offense is a misdemeanor traffic offense.”

Which raises another area of concern the ACLU and others have with risk assessment tools. Measuring success based on failure-to-appear rates also skews success rates against impoverished communities, those that don’t have cars and rely on public transportation, those who can’t easily get time off work without losing employment or may have trouble with childcare.

“There is constantly going to be a poverty factor, there is going to be a policing factor,” Cain says. “The tool should help for release; it shouldn’t drive detention.”

Overall, Wallace argues, why rely on such a tool if it hasn’t moved the needle on decreasing our jail populations?

“There are jurisdictions that have managed to decrease their jail population while using tools, and New Jersey is a great example of that,” Wallace says. “But there are plenty of jurisdictions including Kentucky that have increased their jail population while using these tools.”

New Jersey adopted a statewide pretrial assessment method in 2017, and the jail population has decreased significantly since then. However, racial disparities persist, and more and more advocates are arguing against the method.

Kentucky’s incarceration rate, on the other hand, has remained high, ranking seventh in the country for per-capita incarceration, despite implementing risk assessments more than a decade ago. Plus, judges in that state who were provided with risk assessment scores have shown increased bias in their decision-making, according to a 2019 Harvard study. It found that not only did the use of a risk assessment tool in Kentucky increase racial disparities in initial bond settings, but judges were more likely to override risk assessment recommendations, setting harsher bond conditions for black defendants compared to similar white defendants.

Earlier this year, New York implemented a law that all but eliminates pretrial detention and cash bail without the use of a risk assessment tool in most misdemeanor and nonviolent felony cases. It has already received some pushback, however, over public safety concerns. In California, a measure to fully eliminate cash bail in favor of risk assessment was on the ballot this year, but with pushback from racial justice advocates like Human Rights Watch, PJI and the ACLU, it appears to have failed.

A key factor in moving away from pretrial risk assessments are increased community resources to address people’s needs as opposed to their risk, according to PJI. Allocating funding toward

policies that improve transportation options, court reminders, access to childcare and behavioral health treatment could significantly contribute to addressing failure to appear rates and even likelihood of re-offending. Wallace adds an increased use of summons in lieu of arrests could also help.

“What we want to do is dramatically decrease the pool of folks who are arrested, period,” Wallace says. “If we dramatically decrease the pool of people who are [incarcerated] pretrial, then the folks who are there, we can have more individualized, meaningful decision-making about them, in part because they’re well-represented by counsel, who have time to prepare and meet with them and make bond arguments before the judge. ... Due process hearings like that are really lacking from our current system, and that has a lot to do with volume.”

For now, both DA Dougherty and Rotner from Boulder County say having a tool like CPAT is better than nothing, even if it’s clear the tool needs to be improved.

“The CPAT is something that grounds the judges in having to look at data and try to be objective about it,” Dougherty says. “And obviously that needs to be improved upon, I can’t stress that enough, but I’d rather have that than the judge on Monday being completely different than the judge on Tuesday when it comes to bond. And you can only make the right decision on individual cases if you have accurate information besides just one’s gut reaction.”

Dougherty is also concerned about public safety, especially considering that Colorado falls into the bottom 10 states in the nation when it comes to the re-offense rate: Almost 50% of people who leave state prison will be rearrested in three years, he says. But some of this does have to do with lack of other social services, like substance abuse and mental health support, which face significant pandemic budget cuts, further hampering solutions that don’t rely on risk assessment. Nevertheless, it appears COVID-19 has moved the needle in ways decades of criminal justice reform have failed to do.

“The COVID experience is actually going to be more informative and helpful towards bail reform than perhaps the results of this study,” Cain says.

According to an Oct. 13 ACLU Colorado report, jail populations decreased by 46% statewide at the height of the pandemic, meaning there was an average of 6,000 fewer people in jail every day. Whereas the average jail occupancy was 81% pre-pandemic, it’s now at 47%. (Since July, when jury trials and court sentencing resumed, jail populations have increased 17%.)

The report attributes the jail population to four policies in particular: Active management of county jail populations to reserve beds only for those who posed a threat to others; increased use of summons and heightened arrest standards, which led to a 48% drop in people being held pretrial on misdemeanor charges; increased use of personal recognizance bonds, releasing folks without having to pay; and changes in probation, parole and pretrial services, which meant non-criminal infractions and technical violations didn’t send people back to jail.

“I don’t think that we need to wait for some concept of comprehensive bail reform that has eluded Colorado for so long in order to take substantial steps to keep our jail population as low as it is right now,” Wallace says.

In Boulder County, COVID policies have resulted in a dramatic increase in PR bonds for people who scored high on the CPAT, according to Dougherty, and at the height of the pandemic, those with low scores were released 100% of the time.

“In Boulder County, we’re going to take the lessons that we learned through the pandemic and make long-term changes based on that,” Dougherty says. “We’re living through a forced experiment.”

Daily Journal

November 13, 2020

Money bail foe says he isn't done trying to destroy bail bond industry

By Malcolm MacLachlan
Daily Journal Staff Writer

Senator Bob M. Hertzberg was the man who ended cash bail in California...until he wasn't. But the veteran attorney and lawmaker said the successful referendum invalidating his law doesn't mean he's done with the bail industry.

The Van Nuys Democrat told the Daily Journal he's hopeful the California Supreme Court will end bail through a pending case. He's also planning new legislation to rein in the industry next year, despite the decision by the state's voters.

Meanwhile, the referendum that took down his bail law has given Hertzberg a new target: the referendum process itself. Hertzberg is considering introducing his own initiative through the Legislature to change the rules around referendums. Most of these rules are laid out in the state Constitution, and therefore require an initiative and voter approval to change.

In 2018, Gov. Jerry Brown signed Hertzberg's SB 10, which would have phased out cash bail in California. But this month California voters overturned his decision, rejecting Proposition 25 by 56% to 44%. The bail industry placed the referendum on the ballot.

Hertzberg had a sharp message for those who say he should respect the will of the voters.

"I had some very high level politicians call and congratulate me on bail because they didn't understand what a 'yes' was and what a 'no' was, Herzberg said. "I'm looking at the prospect of introducing a constitutional amendment next year to clarify how referendums work."

"I think they absolutely knew what they were voting for," responded Jeffrey J. Clayton, executive director of the American Bail Coalition and an attorney who has work for bail industry clients. Clayton pointed to 55 civil rights groups he said opposed SB10 and Proposition 25.

Hertzberg said he is considering a bill to require bail companies to reimburse police departments when they apprehend a bail client who doesn't appear for a court date. He is also likely to introduce legislation to impose consumer protection laws on bail companies, possibly soon after the new Legislature convenes Dec. 7.

This could be a repeat of a 2019 effort that stalled in the legislative committee process. SB 318 would have required bail agents to offer contracts in several languages and placed them under the purview of two state consumer protection laws: the Consumer Legal Remedies Act and the Rosenthal Fair Debt Collection Protection Act.

Hertzberg introduced a similar bill in February. SB 960 went nowhere during a 2020 legislative session interrupted by the coronavirus pandemic.

Clayton called these ideas "unnecessary." He said his industry is in regular contact with the California Department of Insurance and noted the failure of Hertzberg's two recent consumer protection bills.

"We don't have problems with translation of contracts and that sort of thing because our bail agents represent the communities they serve," Clayton said.

Of a possible bill to require bail agents to reimburse police, Hertzberg said, "Why shouldn't the police departments be reimbursed? These guys are taking the profits, but they aren't taking the burden."

Clayton said the reimbursement idea is more complex than it might appear, in part because courts are a party to bail contracts. These contracts are written to give both defendants and bail agents a financial incentive.

Judges grant bail and issue the orders to appear. Police follow up when the court order is flouted.

In a 2018 editorial, the late-San Francisco public defender Jeff G. Adachi argued that bail agents "assume no risk at all."

He wrote, "The industry has lobbied for regulations that make it very hard for the state to collect on forfeitures. In spite of the media myth of the swashbuckling bounty hunter, in California bail agents don't spend much time pursuing no-shows."

But Adachi's successor, Manohar P. Raju, has emerged as a key opponent of SB 10 and Proposition 25. Like several others on the defense side, he has criticized the risk assessment tools that have replaced bail in some cases.

Raju's office represents a criminal defendant whose bail is pending before the California Supreme Court, which must test an appellate decision finding courts must consider a defendant's ability to pay when settling bail. The case has been on hold for more than two years, pending the results of Proposition 25.

According to a spokesperson for Raju, the court is likely to take up *Humphrey* early next year. In *re: Humphrey*, S247278 (Cal. Sup. Ct., filed March 6, 2018).

Hertzberg said if the court upholds the decision, the "bail industry is for all intents and purposes gone."

The longtime legislator turns 66 this month and is entering his final two years in the state Senate. He said he is likely to turn his attention back to his longtime interest in the initiative and referendum process. As Assembly speaker, he commissioned a 2002 report that recommended greater financial transparency from initiative sponsors and legislative hearings on initiatives that was seek legislative compromises.

Hertzberg said he believes the referendum process is important. But he added he would like to see two changes. First, he said it is confusing that it requires voters to vote yes to keep a law. This means those pushing a referendum are seeking "no" votes, which are easier to get, he said. UC Berkeley School of Law Dean Erwin Chemerinsky is among those who have said they believe Proposition 25 confused voters.

Second, Hertzberg said he'd like to change a rule that requires referendums be placed at the end of the ballot, we're exhausted voters sometimes abstain or default to no. He pointed out that Proposition 25 received fewer total votes than any of the other 11 initiatives on the ballot.

"That gives a tremendous advantage to anyone who wants to overturn the Legislature," Hertzberg said.

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POLITICS

California NAACP leader resigns amid conflict-of-interest backlash

BY LAUREL ROSENHALL

NOVEMBER 20, 2020

UPDATED ON NOVEMBER 21, 2020



Alice Huffman has resigned as president of the California State Conference of the NAACP, after controversy over the fact that she collected millions in fees from corporate interests as her organization sided with them on state ballot measures. Photo by Anne Wernikoff for CalMatters

IN SUMMARY

Alice Huffman was paid millions by corporate ballot measure campaigns that her historic civil rights organization endorsed, while many Black leaders took opposing positions.

Political consultant Alice Huffman has resigned as president of the California NAACP after a turbulent election season in which several Black leaders criticized her for endorsing ballot measures they saw as bad for African-American communities — while she was paid \$1.7 million to work on the proposition campaigns.

Huffman, who has led the California-Hawaii chapter of the National Association for the Advancement of Colored People for 20 years, sent [a letter](#) to the organization's executive committee on Nov. 12, saying she will step down for health reasons on Dec. 1. She issued a similar [press release](#) today and did not respond to CalMatters' requests for comment.

"With the victory at the top of the ticket securing the election of President-Elect Joe Biden, Vice President-Elect Kamala Harris, as well as securing the reelection of our African American leaders in the California State Legislature, I can say 'mission accomplished' and now take a well deserved rest," Huffman's statement says.

Her resignation from the historic civil rights group follows an unusually busy election season for Huffman, who was paid a total of \$1.7 million by five corporate-backed campaigns that framed their positions with messages of racial justice, as [CalMatters reported](#) in September. It brings her payments by ballot measure campaigns beyond \$4 million over the last two decades.

This year, campaigns funded by commercial landlords, ride-hailing apps, dialysis companies and bail bonds businesses paid Huffman while touting her NAACP affiliation in their ads. She was especially prominent in commercials [against Proposition 15](#), which sought to raise commercial property taxes to increase funding for schools, and [against Proposition 25](#), which would have eliminated the use of cash bail.

"Over the years, Alice basically went against everything that was in the best interest of Black people. And she used the NAACP to do that," said Taisha Brown, chair of the California Democratic Party's Black caucus.

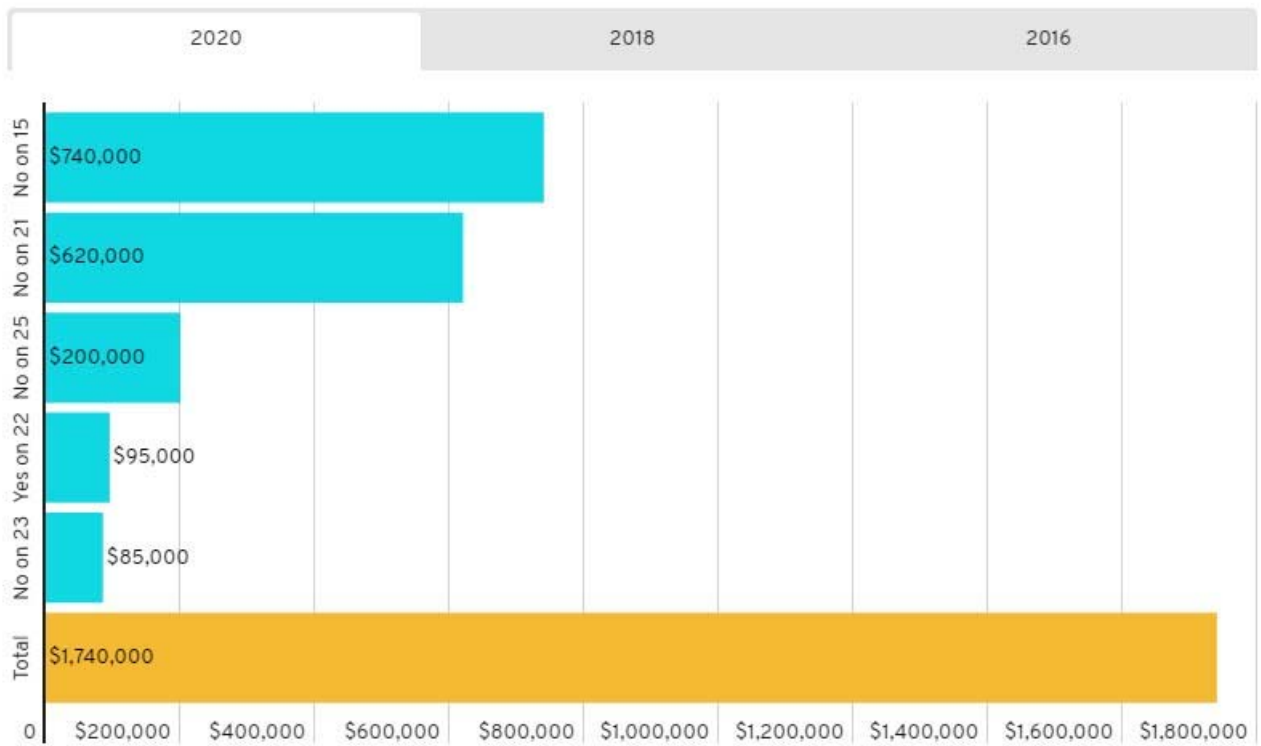
"To use a historically Black organization that is meant for the betterment of Black people was just appalling."

Some local NAACP branches found themselves campaigning against the leadership of their statewide organization this fall. Darrell Goode, president of the NAACP's Santa Monica-Venice branch, asked voters not to heed the California NAACP's endorsements. "They do not represent the interests of people of color within our state," he wrote in an October [press release](#) that cited CalMatters' report detailing Huffman's paid campaign work.

"It made a conflict in the community," Goode said. "People see 'NAACP' and they think it can't be that bad. We believe it's cost us a lot."

Political campaigns pay California NAACP president

This chart shows ballot measure campaign payments to AC Public Affairs, a political consulting firm owned by Alice Huffman, who is also president of the California NAACP. Over several elections, the California NAACP endorsed many of the same positions that Huffman was paid to promote:



Source: California Secretary of State

All the campaigns that Huffman worked on this fall were successful, to the frustration of many social justice advocates who supported failed efforts to expand rent control (Prop. 21), pump more tax dollars into schools and local governments (Prop. 15), and uphold California's ban on cash bail (Prop. 25).

In one especially stark contrast, Huffman was paid \$200,000 by the campaign that successfully overturned California's ban on cash bail — while the national NAACP issued [a statement](#) saying it “has urged each state and municipality to reject monetary bail requirements.”

The No on Prop. 25 campaign drew support from some progressive groups that criticized the plan for replacing money bail. But it was funded largely by the bail bonds industry, which stood to lose enormous business in California if the measure passed. An industry leader said Huffman was critically helpful to the bail bondsmen.

“It would have been difficult to win without the help of the NAACP,” Jeff Clayton, executive director of the American Bail Coalition, said in an interview earlier this month.

“If the NAACP says no, it's a powerful message.”

Rob Lapsely, president of the Business Roundtable that led the campaign against Prop. 15 — which paid Huffman \$740,000 — also praised her work on the effort to fight the so-called “split roll” property tax measure.

“It was a key part of our success,” he said the day after the election.

Brown, the Black caucus chair, and Goode, the Santa Monica-Venice NAACP president, said they've asked the national NAACP to look into Huffman's potential conflicts of interest but have not received a response. That's not going to stop with her resignation, Goode said.

“We are still going to press national to do an investigation,” he said. “In the future we need things to be transparent so we are not perceived as being owned by corporations.”

And, Goode said, he wants “to make sure the NAACP image is not impugned.”

This story has been updated to clarify that the campaign to overturn California’s ban on cash bail was funded largely but not entirely by the bail bonds industry.



Laurel Rosenhall

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Laurel covers California politics for CalMatters, with a focus on power and personalities in the statehouse. Her stories explain political dynamics in the Capitol and examine how money, advocacy and relationships... [More by Laurel Rosenhall](#)



Wednesday, December 16, 2020

11th Circuit to hear case today with major implications for cash bail systems

The federal appeals court will hear oral arguments in *Hester v. Gentry*, a case out of Alabama in which the plaintiff, Bradley Hester, was arrested in July 2017.

Author: Jonathan Raymond (11Alive)

ATLANTA — The [11th Circuit Court of Appeals](#) in Atlanta today will hear a case that could have [major implications](#) for how cash bail systems are administered in Georgia, Alabama and Florida.

The federal appeals court will hear oral arguments in *Hester v. Gentry*, a case out of Alabama in which the plaintiff, Bradley Hester, was arrested in July 2017 for possession of drug paraphernalia.

Hester sued Cullman County over its bail schedule - the [various amounts required](#) for bond based on various offenses - on the argument that "there is no rational basis for a bail schedule and that all defendants must be released within a short time period of arrest," according to advocates involved with the case.

The oral arguments will be conducted over a live audio stream [that will be broadcast by the 11th Circuit here](#). News organizations themselves are not permitted to stream these kinds of federal hearings.

The court's session is scheduled to begin at 9 a.m. It's not clear when exactly *Hester v. Gentry* will be heard - an [11th Circuit schedule](#) indicates at least three other cases are to be heard today.

According to an [Associated Press account](#) of the 2018 district court ruling in the case, Judge Madeline Hughes Haikala ruled in Hester's favor, issuing a preliminary injunction against Cullman County over its bail system.

The AP reported at the time that Judge Haikala ruled people in Cullman County are "treated differently based on their financial status" because of the bail system.

"A defendant with financial means who is charged with assault can go home within two hours of his arrest if he can post a \$10,000 bond, while an indigent defendant charged with fourth degree possession of a forged instrument who cannot afford to post a \$3,000 secured bond remains in custody awaiting a hearing," the judge wrote in 2018.

She appeared to narrow her ruling on indigent defendants - those who are considered impoverished - in particular, writing that Cullman County's system appeared discriminatory against such individuals, depriving them of equal protection under the law.

Hester had claimed indigent status in the 2017 arrest, saying he was unable to pay his \$1,000 bond. According to a [local report in The Cullman Times](#), he remained incarcerated for "several days" after that.

She specified how that differed from an earlier 11th Circuit ruling, which had upheld the bail system in Calhoun, Ga.

According to the AP, Haikala specified her ruling differed from an earlier 11th Circuit ruling, upholding the bail system in Calhoun, Ga., because in Cullman County, "indigent defendants cannot secure their release merely by proving that they are indigent according to a uniform standard."

How the 11th Circuit rules will govern the constitutionality of bail systems in Georgia, Florida and Alabama, the three states under its jurisdiction.

The case could then be appealed to the U.S. Supreme Court.

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December 22, 2020

Dec. 22, 2020

Gascón lacks authority to end cash bail

Newly elected Los Angeles County District Attorney George Gascón is clearly a man on a mission to create new laws, whether the public likes it or not — or even if his authority to do so is in question.



JEFFREY J. CLAYTON

Executive Director, American Bail Coalition

Newly elected Los Angeles County District Attorney George Gascón is clearly a man on a mission to create new laws, whether the public likes it or not -- or even if his authority to do so is in question.

He has been so obsessed with the idea of ending money bail that his head-scratching plan was long-posted on his campaign website, where it still appears. Gascón didn't bother to be sworn in first -- he was ready to jump aboard the "end cash bail" bandwagon, despite the fact that the same voters who elected him also overwhelmingly affirmed their desire to retain bail in California through the defeat of Proposition 25.

It was with this election hype still buzzing that Gascón, a noted progressive Bay Area prosecutor, made his debut. The Los Angeles Times led the charge, proclaiming, "George Gascón Eliminates Bail," in the headline of a story about this first day on the job. The truth is, he did not eliminate bail, nor will he be able to. Despite a flashy, attention-getting show of words displayed during his opening virtual press announcement, Gascón's promise amounts to only so much bluster.

Gascón's biggest hurdle lies in the fact that he is the district attorney and not a member of the state legislature. Simply, his office does not have the authority to change the laws of California. He similarly does not have the ability to refer measures to change the California Constitution, which has provided since 1849 that "all persons are bailable by sufficient sureties."

To be clear: Prosecutors only have the power to enforce criminal laws and related constitutional provisions -- not the power to change them.

The second biggest roadblock in Gascón's plan to end money bail plan is the other office to which he was not elected: superior court judge.

In California, judges have the exclusive authority to set bail; prosecutors have exactly zero ability to do so. As officers of the court, they are charged with making recommendations as to bail, but like those given by public defenders or defense counsel for defendants, they are not dispositive. Also, while they are recommendations only, they must also be based on constitutional or statutory factors.

Gascón's policy simply states that his deputies are not going to recommend bail in certain cases. However, it is noteworthy that it stops short of declaring that they will oppose the bail that judges set in cases that require them to do so, according to state constitutional

provisions. Moreover, Gascón's deputies will not be arguing for no bail based on constitutional statutory factors. They have simply been ordered to shut up.

Another problem -- and perhaps a fatal one -- is that California law requires all bails to first be set according to a bail schedule. Each jurisdiction is required to have its own bail schedule, which is set annually by the judges within each superior court. At present, they already have established bail schedules which will encompass nearly every defendant Gascón will charge with a criminal offense while he is in office. When his deputies arrive at first appearances, bail will have already been set, and the defendant in most cases, already released from jail by posting the prescribed amount. There will be no bail to ask for at such point, because it will have been already set and posted. There will be infrequent instances where a defendant, who has not posted the bail amount set by the schedule, appears before a judge and asks for a reduction in bail. When that happens, Gascón's policy dictates that his deputies not say anything at all.

Gascón's new policy is fundamentally flawed and contrary to the duties and responsibilities of the office of district attorney. In essence, it declares that he has abandoned his duty to seek justice in each case pursuant to the law and ignores the rights of victims of crime through the enactment of this policy.

California's system of criminal justice relies on individual judgments of independent officials evaluating the facts and circumstances of each case and applying the law. In putting together the factors for the consideration of bail in his new policy, Gascón has included those that are dissimilar and contradictory of those in the state constitution and its statutes.

Particularly egregious is Gascón's attitude toward victims of crime. The state constitution contains a well-known provision called Marsy's Law, which is there to protect their rights. It requires that these individuals be heard about a defendant's pretrial release prior to a prosecutor making a recommendation on bail. The new district attorney's policy is to predetermine what is appropriate bail for a defendant before the victim of a crime has even become a victim!

Of course, Gascón might instruct his deputies to meet with victims of crime anyway, in what would be nothing more than a meaningless gesture. To feign concern and pay lip service to victims and their opinion on what is appropriate bail would be the definition of sham due process.

Picture this scenario: Gascón's deputies sit down with a victim of a serious crime for which the district attorney's new policy requires that they not seek bail. The defendant has fled the jurisdiction any number of times, only to be caught. The crime victim demands that there be some security recommended, i.e., the "sufficient sureties," as required for release pursuant to the state constitution. After dutifully listening to the crime victim's pleas, Gascón's prosecutor thanks him or her for stopping by, but nothing they said means anything -- "we're not seeking bail because my boss said so."

Another key problem is that Gascón's use of criminal charges as the touchstone of bail lacks a rational basis. He did not arrive at his new policy based on an examination of the situation in Los Angeles County. That is, he did not look at charges in the county and come to the conclusion that they involved people fleeing from prosecution and were more likely to commit a new crime than those charged with non-bail charges. We know this because Gascón's policy was published on his campaign website months ago. He could only have reviewed data of a criminal justice agency after he was sworn in and finally granted

authorization to review this information.

Therefore, Gascón's new policies are based on nothing more than his own arbitrary decision to remake the district attorney's office in his own image -- the facts, history and evidence be damned.

Frankly, if he had actually reviewed the data, he would have concluded, as many scholars have for a generation, that a criminal charge alone is a poor indicator of whether someone will reoffend or not show up for court. Instead, the individual circumstances of a defendant in a particular case, in addition to consideration of the severity of the charges, are much better predictors.

Whether it is arrogance or ignorance, Gascón seems ill-prepared for the heavy responsibilities of district attorney. It doesn't seem to matter to him what a pretrial risk assessment would say about a defendant, what the statutory or constitutional factors require judges to look at when considering the risk of a defendant, what the victim of a crime has to say, or what input his seasoned prosecutors can provide from their professional experience when it comes to pretrial release. The only thing that matters to Gascón is that he's going to end cash bail rather than seeing that justice is done for everyone involved. You can bet he won't succeed in either endeavor. □



Michigan's nonpartisan, nonprofit news source

A Michigan prosecutor says no thanks to cash bail. Will others follow?

January 18, 2021 [Ted Roelofs](#) [Michigan Government](#)



Michigan reform advocates say cash bail keeps thousands of people who pose no safety risk in jail simply because they can't afford to post bond. (Shutterstock)

On any given day in jails across Michigan, thousands of inmates sit behind bars as they await a criminal trial for a simple reason: They didn't have the money to post bail.

Many are in for a variety of non-violent crimes, ranging from traffic offenses to theft to possession of drugs.

But that is set to change in Washtenaw County, as new County Prosecutor Eli Savit will [no longer seek cash bail](#) as a condition of release before trial.

It's the only county with such a prosecution policy in Michigan — and was notably absent in a sweeping set of bipartisan, state criminal justice reform measures [signed into law](#) Jan. 4 by Gov. Gretchen Whitmer. A separate measure would likely [reduce courts' reliance on cash bail](#) has thus far stalled in the Legislature.

“Cash bail is a system that discriminates against people in the legal system based on how much money they have,” Savit told Bridge Michigan of the change, one in a slew of progressive policies he has enacted since assuming office in January.

“It's a system where if you are poor and charged with even relatively minor offenses, you can sit in jail for days or weeks or months. It's at odds with the fundamental principle that people should be treated equally, not based on how much money you have in your bank account.”

A 2020 state task force [report](#) found that 40 percent of Michigan jail inmates with bail set between \$2,500 and \$10,000, and 38 percent of those with bail set at or below \$2,500, remained in jail after they were charged until resolution of their cases.

That can cost taxpayers as well.

Overall, [more than half](#) of 16,000 Michigan jail inmates in 2015 were awaiting trial, according to the Vera Institute of Justice, a New York-based nonprofit criminal justice reform advocacy organization. At an average inmate cost of \$75 a day, that would amount to more than \$200 million a year.

Savit said cash bail hits people of color harder than white people, citing preliminary analysis by ACLU of Michigan that found that Black inmates in Washtenaw County were



Cash bail “discriminates against people in the legal system based on how much money they have,” said Washtenaw County prosecutor Eli Savit. (Courtesy photo)

nearly nine times more likely to be held in jail before trial than white inmates.

Nationwide, civil rights groups and reform advocates say that people who can't make bail are more likely to lose jobs or custody of their children, and more likely to take a plea deal, even if they are innocent, to get out. There's evidence, they say, it leads to more crime.

But in this ongoing debate, opponents in Michigan and other states defend a [commercial cash bail system](#) that's been in place in the United States for more than a century. Eliminating cash bail for even lower level charges, they contend, can in fact jeopardize public safety and increase crime.

State Rep. Matt Maddock, R-Milford, has been a conspicuous opponent of cash bail reform in Michigan. He's owner of [A-1 Bail Bonds](#), with a website that notes it employs 27 bail bond agents serving more than two dozen Michigan counties.

Maddock told Bridge in an email: "Sadly, our criminal justice system is under attack and is being pushed to benefit criminals instead of victims. When all these people released with zero bail don't show up, then what are they going to do? That's what we all need to ask to ensure the safety of our neighborhoods."

That's not the view of Alison Shih of the Vera Institute, who told Bridge: "We know that even two days in jail can be so destabilizing in a person's life or their responsibilities for employment, that it increases their chances they will be rearrested in the future."

Indeed, research backed by the Texas-based Laura and John Arnold Foundation, which backs criminal justice reform, found a link between the length of time in jail before trial and odds an inmate will commit another crime.

It cited a 2013 [study](#) that examined more than 66,000 cases in Kentucky in 2009 and 2010 in which defendants



"Sadly, our criminal justice system is under attack and is being pushed to benefit criminals instead of victims," said State Rep. Matt Maddock, R-Milford. (Courtesy photo)

were released from jail at different points before trial.

When compared to low-risk offenders who committed comparable crimes but were not held in jail, defendants detained two to three days before release were 40 percent more likely to commit a new crime before trial. Those held 31 days or more were 74 percent more likely to commit a new crime.

In some cases, the consequences of being unable to make bail have been tragic. In 2016, a Grand Rapids teen was arrested and jailed on misdemeanor charges of theft and damage to a car. But he failed to post the \$200 bail he needed to get out of jail. Three days later, officers found him unconscious in his cell, a bed sheet wrapped around his neck. He later died in a local hospital.

In Washtenaw County, prosecutor Savit and others on his team will make a basic assessment when determining whether to recommend defendants should be released without posting bail: Are they a danger to the public?

“No. 1, what is the crime you are charged with committing? We are going to much more likely to hold someone pending trial if they are charged with a serious violent offense, one involving a weapon, certainly if they are charged with rape or armed robbery,” Savit said.

“In those cases, we are probably going to hold someone pending trial.”

In other cases, Savit said, prosecutors may recommend release without bail but attach conditions to protect the public, such as an order to wear a tether or, in the case of domestic violence, a no-contact order.

As in all pre-trial proceedings, the terms of release — and even whether to release a defendant at all — is up to the presiding judge. Judges generally weigh defense and prosecution recommendations in making that decision.

Michigan judges have an array of bail options at arraignment, including the release of a defendant with no money on what is known as a personal recognizance bond — a promise to make all court appearances — as well as bonds involving cash payments or the use of a commercial bail bondsman. In some cases, property can be used as collateral.

In deciding the terms of release, Michigan’s criminal code instructs judges to weigh multiple factors, including the defendant’s prior criminal record, history of appearance for any previous court proceedings and the seriousness of the crime.

Michigan provides for the right to bail for nearly all crimes, with the exception of murder, treason, first-degree sexual conduct and armed robbery or kidnapping.

Just a handful of days into his tenure, Savit, who once clerked for U.S. Supreme Court justices Ruth Bader Ginsburg and Sandra Day O'Connor, has made a name for himself through a series of policy changes aimed at reducing racial and socioeconomic inequities.

His office ended so-called zero-tolerance crime policies and said it will recuse the office from overseeing investigations of alleged police violence within the county, instead seeking an independent special prosecutor to handle such cases. It also will [no longer charge sex workers engaged in consensual acts](#), nor prosecute cases of possession of buprenorphine, an opiate substitute, or cases involving the growing of plants that produce naturally occurring psychedelics.

Savit said he's received a positive reaction from district and circuit court judges in Washtenaw County to his bail policy.

"I can't—and wouldn't—speak for judges, and canons of judicial ethics prohibit judges from making blanket commitments about how they will approach cases. That said, we've met with nearly every judge in the county on this and, in general, we've been pleased with the response," he said.

Outside Michigan, other jurisdictions are beginning to do away with cash bail or reduced its use:

- Washington, D.C. is among the pioneers of bail reform, as it largely eliminated cash bail as a condition of release in the 1990s.

It replaced cash bail with security assessment tools that focus on a defendant's likelihood of committing another crime or failing to appear in court if they remain free while their case is pending, saving about \$400 million a year in jail costs.

About 90 percent of Washington, D.C. defendants are released without bail, while the remainder – deemed either too dangerous or likely to miss their court appearance – are held regardless of their ability to meet a bond payment.

According to Washington, D.C. court data, 90 percent of those released from jail before trial made all scheduled court appearances and 98 percent were not arrested for a violent crime while in the community pending trial.

- New Jersey passed a suite of criminal justice reforms in 2016 that eliminated cash bail and created a new pretrial services program. Since implementing these reforms in 2017, New Jersey saw a [20 percent reduction](#) in its jail population.

In 2017, 95 percent of defendants were released pretrial and 89 percent of them appeared at their trial date.

- Harris County, Texas, home to Houston and the third-largest jail system in the country, reformed its pretrial system as part of a consent decree to [virtually eliminate](#) the use of money bail for misdemeanor charges.

Prior to these reforms, 40 percent of people arrested on a misdemeanor charge were held in jail until their case was settled. Experts estimate that reforms will result in pretrial release for up 95 percent of misdemeanor defendants.

State Rep. David LaGrand, D-Grand Rapids, has been pushing for statewide reform of cash bail for five years.

He's optimistic it will get done this year, even though a 10-bill measure he championed failed to muster the support it needed to clear the Legislature in 2020.

Those bills sought to stop counties from keeping low-income, low-risk offenders in jail just because they can't afford bail. The measure made the presumed condition of pretrial release a personal recognizance bond — requiring no cash — unless there is a risk to the community or of the defendant missing court dates.

LaGrand said the measure had backing from circuit and district courts, the Michigan Association of Counties and the Michigan Chamber of Commerce, in addition to Democratic Michigan Attorney General Dana Nessel. With the start of a new legislative session in 2021, LaGrand expects to pull together a similar package this year.



State Rep. David LaGrand, D-Grand Rapids, has been pushing for statewide cash bail reform for five years.
(Courtesy photo)

“I am going to get it done,” he said.

Jeffrey Clayton, executive director of the American Bail Coalition, a trade group that represents insurers who underwrite criminal bail bonds, agreed that some “low-level” criminal cases should not require a posting of cash for release.

But he added: “To have a policy saying we’re never going to seek bail would be inappropriate.”

In New York state, a 2019 measure to abolish bail for many misdemeanors and nonviolent crimes [met with pushback from police and prosecutors](#) after the New York Police Department pointed to a spike in crime that critics tied to the reform. Reform advocates claimed police were [manipulating crime data](#) to paint a false picture of rising crime.



January 27, 2021

Democratic State Lawmakers Renew Push for Bail Reform

In November, state voters sided the bail industry, and killed legislation that would have ended cash bail in the state and replaced it with a system that gave judges more power to decide who should be released from jail before trial. Now Democratic state lawmakers are taking another swing at bail reform.

Reporter: Marisa Lagos, KQED

THE INDIANAPOLIS STAR

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Op-ed: Donations to bail funds soared post-George Floyd. How Indiana can keep them on task.

Jeffrey J. Clayton

Published 6:03 a.m. ET Feb. 11, 2021



The Bail Project: How it works

Kathleen Merchant is getting her life together after The Bail Project bailed her out of jail. *Kelly Wilkinson, kelly.wilkinson@indystar.com*

Charitable bail funds have operated for many years in Indiana, as well as throughout the nation. Posting bail for the indigent, these funds have largely restricted themselves to poor individuals truly in need — persons who have been held in jail and charged with low-level crimes.

This is so because when someone else's money is on the line, a defendant has no incentive to return to court and may abscond and commit other crimes without redress.

After the controversial death of George Floyd last May, massive civil unrest broke out in Minneapolis, with hundreds taken into custody by the police. According to Bloomberg News, charitable bail funds nationwide raised more than \$100 million in 2020, a good chunk of it ostensibly to bail out peaceful protesters.

However, only a dozen or so of these individuals were ever bailed out through these funds. Instead, many of the beneficiaries were accused of far more serious crimes.

Some 2020 bail fund donations helped violent felons

For example, the Minneapolis Freedom Fund, a nonprofit bail organization, posted \$350,000 for a defendant twice convicted of rape who was charged with kidnapping and sexual assault in two separate cases and also defendants charged many other serious felonies, including domestic assault, firing on police and sexual offenses.

Of course, the purpose of bail is to allow someone to be free pending trial. But it also exists to provide a degree of security for their return to court. When bail is posted, that amount will be forfeited to the courts if the defendant does not appear as required.

That financial assurance typically comes from one of three sources: the defendant, a trusted third party or a qualified bail agent appointed by a licensed surety corporation that actually posts the bond and has arrest powers to return fleeing defendants to court.

When a third party or a bail agent posts bail for a defendant, they are responsible for one thing: to guarantee that this individual will appear in court.

How Indiana legislation would change bail funds

Unlike licensed bail agents, bail funds do not have the ability to recover defendants who skip court, and their involvement should be limited to cases that don't impose a significant risk to the public's health and safety.

Legislation now before the Indiana General Assembly, House Bill 1376, fixes this on a statewide basis.

To be clear, there is definitely a need and place for well-intentioned, properly run charitable bail funds. New York has regulated the practice of charitable bail, legitimizing it for its intended purpose.

The state has put in safeguards to ensure that it truly serves indigent parties at the low levels it is supposed to and may not be used to destabilize the criminal justice system.

The law only allows for misdemeanor bonds of \$2,000 or less to be posted and requires that they be reported to the state.

It also applies the same regulatory regime used to regulate the commercial bail industry. Maintaining strict protocols are key to success, both to keep charitable bail charitable, but also to fend off negative elements, like organized crime and foreign governments.

With all this in mind, Indiana's HB 1376 regulates charitable bail organizations in Indiana, in a fashion similar to New York state, to ensure they adhere to their original purposes. The main argument leveled against this piece of legislation maintains that capping the size of bonds and limiting them to misdemeanors will, in effect, be a ban on charitable bail in the state.

Yet, according to numbers released by The Bail Project, the cases they bailed out in Indiana for a five-month period in 2019 averaged \$1,392, while the median was \$500. Thus, the existing charitable bail regime in Indiana remains committed to sticking to the original purpose of serving truly indigent people charged with low-level crimes. Regulation will in effect freeze the status quo, increase accountability and stop future destabilization efforts.

While runaway bail funds have not yet gained steam in Indiana, they must not be permitted to gain a foothold in our state. That is why HB 1376 has been introduced. It's imperative that we protect the integrity of Indiana's bail system in order to maintain public safety and guarantee that victims of crime get their day in court, while ensuring that charitable bail serves its intended purpose.

Jeffrey J. Clayton is executive director of the American Bail Coalition, a trade association made up of national bail insurance companies.



Jeffrey J. Clayton is the executive director of the American Bail Coalition. Provided

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THE MAGAZINE OF THE LOS ANGELES COUNTY BAR ASSOCIATION

Los Angeles Lawyer

FEBRUARY 2021 / \$5 / Part 1 of 2

THE MAGAZINE OF THE LOS ANGELES COUNTY BAR ASSOCIATION

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FEBRUARY 2021 / \$5 / Part 1 of 2

On the Cover
.....

Beyond Bostock

Los Angeles lawyer
Rebecca Green
compares the U.S.
Supreme Court's recent
decision advancing
LGBTQ employment
rights in federal law
with California
antidiscrimination
law
page 14

— PLUS —

Coronavirus
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LASC Jury
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page 10



by Jeffrey J. Clayton

Closing Argument

The right to bail in California was challenged during last November's election, with Proposition 25 going down to a resounding and definitive defeat. Voters affirmed their desire for the constitutional right to bail. The "Yes on Prop. 25" campaign was built on mischaracterizing cash bail as a "broken and evil system." Most of this ire was directed toward the concept that bail schedules are fundamentally unfair.

However, there is no constitutional right to a bail schedule. Indeed, there are entire states and jurisdictions in the nation that do not use bail schedules whatsoever. Proposition 25 was instead a question as to whether there should be a right to bail at all, whether it be by schedule, magistrate, or judge.

Yet, the right to bail itself in the United States is so fundamental that it forms part of the original Bill of Rights. This same right to bail by "sufficient sureties" in California has been enshrined in the state's constitution since 1849. We now understand this to be a more expansive right than the federal constitutional right to be free from excessive bail, which includes posting a bond or third-party financial guarantee, money, or some other thing of value.

Thus, despite a misleading portrayal by advocates, there is no "money bail system" in California. Rather, there is a

Voters Affirm the Constitutional Right to Bail

right to bail by sufficient sureties governed by the state constitution and statutes. Proposition 25 asked voters if they would prefer to opt out of the requirement to post bail and instead choose a system that would either expand government power to detain persons without bail during the entire pendency of trial or put them on harsh preconviction probation.

If passed, the California Legislature would have turned to a yet-to-be-developed pretrial risk assessment tool in order to sort persons into three risk categories: high, medium, and low. "High risk" would mean probable detention. "Low risk" would likely allow defendants to go home immediately. Meanwhile, "medium risk" would put them on track for supervision by a massive county pretrial supervision dragnet.

Proposition 25 would have made the right to bail

contingent on the speed and efficiency of state and local bureaucracies, effectively denying an immediate right to anything. Before anything could proceed, a risk assessment report would have been required to be generated by a county official. Then, once the low-risk individuals were separated from the group, the remainder would be forced to wait for their hearing in open court during the hours that remained.

Of course, a defendant would not know his or her risk score upon arrival. From the time the assessment is run to when it is discovered whether the score is medium- or high-risk, the individual would have mere hours to argue the results. Not that it may have mattered much, as the deck would have been highly stacked in favor of the risk assessment tool, which had already been declared by the state judiciary as being valid and scientifically accu-

rate. Defendants would have faced two key immediate negatives: strict preconviction probation or preventative detention during the entire pendency of the case.

Voters preferred the existing system that allows people who are able to post bail in California to do so within hours of arrest. Voters rejected the notion that their right to bail was conditional, depending on what a computer program determined, after waiting a couple of days or so.

Proposition 25 was fundamentally flawed because it offered an exceedingly poor solution to a half-thought-out problem. When it comes to pretrial release, the process is too slow right now. The measure would have made the situation even worse. The premise of the measure was that using a computer to make predictions, based on past historical data, and allowing the state more opportunities to deny the right to bail would result in mass de-incarceration while simultaneously better protecting public safety.

On its face, Prop. 25 was a nonstarter. It was not reasonable to think that statutorily codifying greater administrative delays was somehow going to speed up the release process. Fortunately, California voters were able to see through this poorly conceived measure to take away the constitutionally guaranteed right to bail. ■

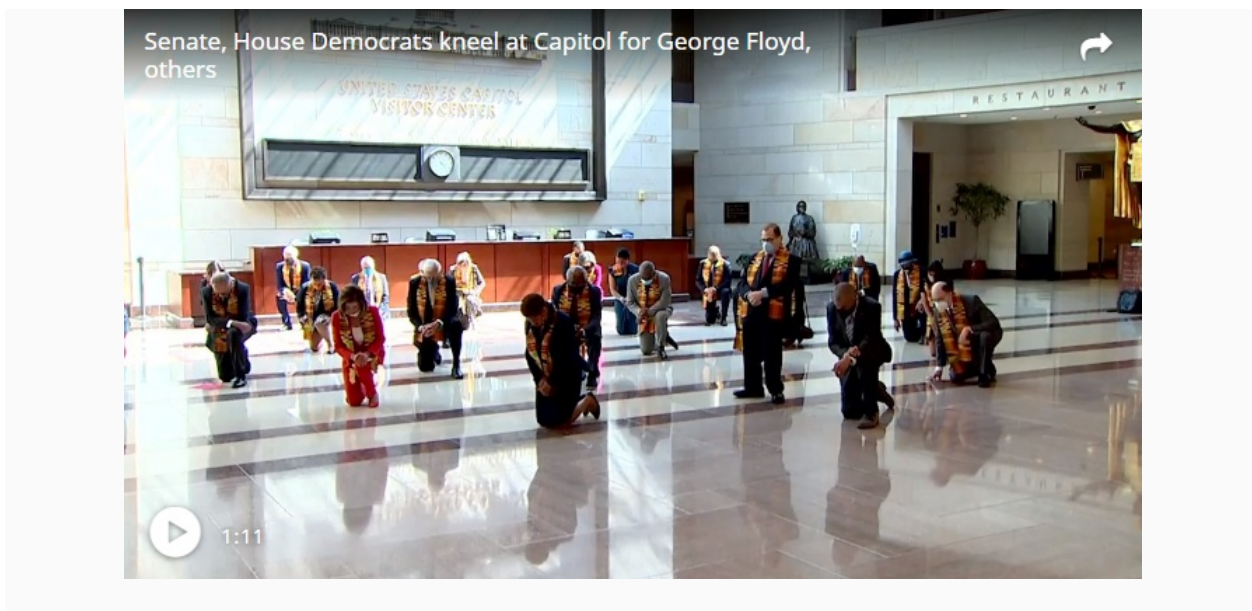
Jeffrey J. Clayton is the executive director of the American Bail Coalition. He has worked as a public policy and government relations professional, as well as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters.

THE SACRAMENTO BEE

Did Kamala Harris bail out Minneapolis rioters last year? Here are the facts

BY DAVID LIGHTMAN

FEBRUARY 18, 2021 05:00 AM, UPDATED FEBRUARY 18, 2021 07:11 PM



At Emancipation Hall, House and Senate Democrats knelt for 8 minutes and 46 seconds - the length of time prosecutors say George Floyd was pinned under a white police officer's knee before he died.
BY POOL VIA AP



Listen to this article now

04:55

Powered by **Trinity Audio**

WASHINGTON

Sen. Lindsey Graham sees a time when Republicans could impeach Vice President Kamala Harris because of her call for donations so that a nonprofit could bail out activists arrested at Black Lives Matter protests in Minneapolis.

But the factual basis for Graham's claim is somewhat flawed.

"If you use this model, I don't know how Kamala Harris doesn't get impeached if the Republicans take over the House, because she actually bailed out rioters, and one of the rioters went back to the streets and broke somebody's head open," Graham told "Fox News Sunday" this week.

The South Carolina Republican is close to former President Donald Trump, who had been acquitted by the Senate the previous day of charges that he incited the January 6 Capitol riot.

Harris, a rising Democratic star, has been a favorite target of Trump supporters for months.

The South Carolina Republican is close to former President Donald Trump, who had been acquitted by the Senate the previous day of charges that he incited the January 6 Capitol riot.

Harris, a rising Democratic star, has been a favorite target of Trump supporters for months.

After the May 25 death of George Floyd while in Minneapolis police custody, protests erupted all over the country. Harris was active in efforts to reform police practices, and participated in a peaceful Washington, D.C. protest May 30.

Two days later [she tweeted](#) “If you’re able to, chip in now to the [@MNFreedomFund](#) to help post bail for those protesting on the ground in Minnesota.”

The Minnesota Freedom Fund, established in 2016, has as its mission that it “pays criminal bail and immigration bonds for those who cannot otherwise afford to as we seek to end discriminatory, coercive, and oppressive jailing.”

Its premise centers on the common criticism of money bail, that wealthier defendants can easily post bail and await prosecution at home, whereas defendants with less financial means must remain in confinement before trial.

Until last year, it had collected relatively small amounts of money. [Its 2018 federal tax form](#) shows it got \$110,000 in contributions that year.

In 2020, it became enormously popular after Floyd’s death. Currently, the fund [says on its web site](#) that it has received more than \$30 million in donations.

HARRIS AND THE RIOTS

Harris did not personally bail out rioters or have any other interaction with the fund, according to its Greg Lewin, its interim executive director.

At the American Bail Coalition, Executive Director Jeff Clayton noted that most of those involved in the rioting after Floyd’s death were bailed out before donations began piling up at the fund.

He noted that it has been criticized in recent months because “they were and have been since (the riots) bailing out violent defendants. But that has nothing to do with insurrection.”

The fund appears to have struggled to manage what overnight became a multi-million dollar operation.

“They really don’t have a policy as far as I know. There’s no criteria they use to distinguish between defendants. They try to either bail people out at random or find people who are innocent,” Clayton said.

Lewin explained that it’s been difficult to go from being an organization with a staff of one and volunteers to become a much bigger entity.

But he noted that “trying to make a bail fund a villain is ignoring the fundamental injustice of a system that frees one person and jails another due to ability to pay.”

THE CASE OF LIONEL TIMMS

One of the cases cited by Graham’s office involved that of [Lionel Timms](#), a Minneapolis man charged in July with assault after attacking a passenger on a bus.

The Minnesota Freedom Fund paid his bail. Eleven days after his release, Timms allegedly punched and kicked a bar manager, who suffered a traumatic brain injury, a fractured skull and a brain bleed.

The two incidents had nothing to do with the rioting, Lewin said.

“We paid his bail after working to first ensure that Mr. Timms would be provided with housing and other necessary support as Mr. Timms requested. Delays in the government’s processing of his release prevented him from receiving that assistance, setting the stage for the subsequent tragedy,” said Lewin.

RELEASED AND CHARGED AGAIN

The fund also paid bail twice for the release of Thomas Moseley. He was at an October protest on the skyway level of the Hennepin County Government Center in Minneapolis where he was part of a group protesting a court appearance by the four police officers charged in Floyd’s death, according to a statement from the [county attorney’s office](#) and [criminal complaints](#).

“Police knew there was a pickup order for Moseley for possible charges in the Aug. 15 damage to the Fifth Precinct building,” the statement said, and he was charged with felony criminal damage to property and gun possession.

The freedom fund paid his \$5,000 bail in those cases.

On New Year’s Eve, Moseley and others were charged with second-degree riot for a protest that night in downtown Minneapolis. This time, the freedom fund paid his \$60,000 bail.

On January 27, he was re-arrested for new evidence on his original firearm charges.

Jordan Kushner, Moseley’s attorney, said his client is “not accused of any violence against anyone.....he’s not accused of any kind of assault.”

Kushner said “there’s no way he’s going to get convicted of rioting. There’s no evidence he did anything that he was involved in a riot.”

In another case cited by Graham’s office, the fund paid \$75,000 last year to secure the release of [Jaleel Stallings, who was](#) charged with two counts of attempted second-degree murder for shooting at police officers during May’s riots and protests, according to a statement by the Hennepin County (Minneapolis) County Attorney.

Stallings disputes the charges and is awaiting a jury trial.



House Speaker Nancy Pelosi of California, with Sen. Kamala Harris, D-California, and other Congressional Democrats, speaks during a news conference to unveil policing reform and equal justice legislation on Capitol Hill, Monday, June 8, 2020, in Washington. MANUEL BALCE CENETA AP

DAVID LIGHTMAN
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David Lightman is McClatchy's chief congressional correspondent. He's been writing, editing and teaching for 49 years, with stops in Hagerstown, Riverside, Calif., Annapolis, Baltimore and since 1981, Washington.



ISSUES FACING
CALIFORNIA

Support for SB 262/AB 329 to reform the statewide
bail system

California

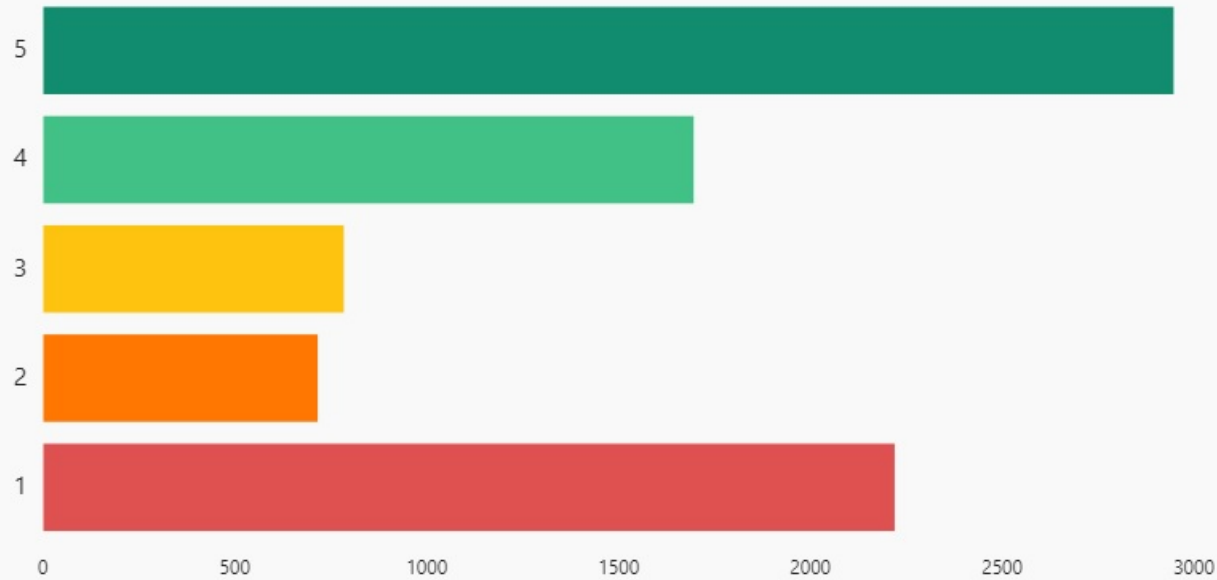
Hi, it's VOCA. This week's question is about criminal justice reform.

BACKGROUND: Following the defeat of Prop 25 last November (replace cash bail with a flight-risk algorithm), 3 CA lawmakers have introduced bills SB 262 and AB 329. If passed, they would reduce bail to \$0 for misdemeanors and defined "low-level" felonies. When bail is required, bail bond fees would be cut to 5% (vs 10% today), and specific bail amounts would be set across the state based on the accused crime.

QUESTION: From 1 (strongly OPPOSE) to 5 (strongly SUPPORT) please rate the statement, "The CA Legislature should pass SB 262/AB 329 to reduce bail to \$0 for misdemeanors and some felonies, reduce bail bond fees, and set statewide bail amounts."

LEARN MORE: Visit <https://voc.as/sb262yes> for a press release from the bills' sponsors. Visit <https://voc.as/sb262no> for a statement from the American Bail Coalition.

VOTES	PERCENT	MAP
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- 8,365 responses
- 5 2,947 strongly support (35.2%)
 - 4 1,696 support (20.3%)
 - 3 784 neutral (9.4%)
 - 2 716 oppose (8.6%)
 - 1 2,220 strongly oppose (26.5%)



NEWS > POLITICS

Bill to reduce jail populations faces criticism from Colorado law enforcement

A criminal justice reform bill that is making its way through the state legislature is facing steep opposition from the law enforcement community.



A criminal justice reform bill that is making its way through the state legislature is facing steep opposition from the law enforcement community.



By: [Meghan Lopez](#)

Posted at 6:39 PM, Mar 04, 2021 and last updated 8:33 PM, Mar 04, 2021

DENVER — After nearly 7.5 hours of testimony in the state legislature, a criminal justice reform bill passed on a vote of 3-2 along party lines.

All Republicans voted against it and all Democrats voted for it. It's now moving on to the Appropriations Committee.

The bill is facing steep opposition from the law enforcement community.

[Senate Bill 62](#) would continue some of the practices law enforcement agencies across the state have implemented during the COVID pandemic to reduce jail populations.

“One thing they did was they told officers to issue summonses as opposed to arrest warrants for people to give people a date to come into court rather than executing a custodial arrest and bringing them into jail,” said Sen. Pete Lee, a Colorado Springs Democrat who is one of the bill's sponsors.

Lee says the changes made to jails over the course of the pandemic have saved the state roughly \$210 million since fewer people were being housed.

The bill aims to codify some of the changes into law as a way to lower overall jail populations across the state.

The bill would give officers the right to issue a summons rather than arresting suspects for any offense committed.

“We are addicted to incarceration,” Lee said. “The incarceration system doesn’t work very well. Fifty percent of the people who come out of the Department of Corrections go back within three years.”

He believes the jails should be reserved for people who pose a risk to the community and not be used as a way to deal with people suffering from mental health problems or who are dealing with poverty issues. The American Civil Liberties Union, criminal justice reform groups and some district attorneys like Denver DA Beth McCann have thrown their support behind the bill. Other district attorneys groups have taken a neutral stance.

The bill also prohibits officers and deputies from arresting a person who committed a traffic offense, petty offense, municipal offense, misdemeanor crime, a class 4, 5 or 6 felony or a class 3 or 4 drug offense.

Sen. John Cooke, a Greeley Republican and former sheriff, believes the bill is a bad idea since those felonies include things like animal fighting, disarming a police officer, violation of custody orders, arson, aggravated motor vehicle theft, bribing witnesses, bringing contraband into a jail and more.

“It’s pro criminal. I wouldn’t say it’s anti-victim, but in a way, it is. It’s anti-public safety, anti-community safety,” Cooke said.

The bill allows for certain exemptions to these rules to allow law enforcement officers to make an arrest if the crime involves an illegal firearm, a victims' rights crime, unlawful sexual behavior, cases of domestic violence, threats to schools and more.

Along with changing the arrest standards for officers, SB62 also prohibits courts from issuing monetary bonds for these crimes unless it’s determined that the defendant is a flight risk or a risk to someone’s safety.

It also requires courts to issue personal recognizance bonds (also known as signature bonds) for defendants who fail to appear at their court hearings three or more times.

“By encouraging judges to use more personal recognizance bonds, it will reduce the number of people in the jails,” Lee said.

Supporters of the bill say monetary bonds disproportionately affect communities of color and low income communities and punish people by incarcerating them before they've had their day in court. During a hearing on Thursday, [the family of Michael Marshall](#) testified in support of the bill saying Marshall should not have been in jail

and this bill might have saved his life. Several other families whose loved ones died in jail also testified in support of the bill.

Cooke disagrees with the extended use of PR bonds and argues that allowing people to not face monetary bonds for failing to show up to hearings three or more times will mean victims will not see justice for years, if at all.

“People are not going to show up for court. They’re not going to get picked up again for two or three or four or five years,” Sen. Cooke said.

He argues the bill would see more support if class 4 and 5 felonies were removed from the list and PR bonds were only issued after one failure to appear.

During Thursday's hearing law enforcement officers, mayors, representatives from the business community and more lined up to testify against the bill, saying it will make communities less safe. Many cited an increase in crime last year in various parts of Colorado.

“This is just I think an invitation for criminals to continue the contact without any interruption of serving time, assuming they even show up. This is a catch-and-release program where for serious crimes you’re only given a court date,” said Aurora Mayor Mike Coffman.

Coffman said the crime rate in Aurora has increased during the pandemic, including a 70% increase in auto thefts.

While he understands the reasons law enforcement are enforcing these rules during the pandemic, he says he doesn’t think they should be made permanent.

“It will make our city less safe. We will not bring down the rise in crime rate that we have had and that we suffered from during this pandemic as a result of this bill if it passes,” Coffman said.

Meanwhile, Maris Herold, the new chief of police in Boulder, says she has also seen a spike in crime over the past nine months.

“We do not know what’s happening because of a crazy year with this pandemic, so why in the world would we want to pass major legislation right now? It’s not the right time. There’s other things we can focus on,” Herold said.

Before making any serious changes, she would like researchers to take time to dig into the data from the past year to figure out why crime rates have gone up in some areas and the role changes to the jail system played in those rates.

Bill co-sponsors offered a number of amendments to the bill during Thursday’s hearing in order to give law enforcement more leeway in decisions to arrest offenders for some of these crimes.

Still, testimony on the bill lasted for hours with criminal justice reform advocates insisting this bill will help keep low-level offenders out of jail while law enforcement officials and others insisted this bill will hurt community safety.

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Months later, a bill at the Legislature that would make the identity of someone paying cash bail a public record is now gaining some traction in the DFL-led House. The ACLU of Minnesota and the Freedom Fund oppose the measure, saying it could put domestic violence victims in danger, target the poor and distract from broader efforts among progressives to change the cash bail system.

Yet the bill, which is sponsored by Rep. Paul Novotny, R-Elk River, received a hearing Friday in the House Public Safety and Criminal Justice Reform Finance and Policy Committee. And state Rep. Carlos Mariani, DFL-St. Paul, who chairs the committee, said Novotny's legislation could be included in a larger package of criminal justice bills House Democrats plan to approve.

How charitable bail organizations got put in the spotlight

When someone is arrested in Minnesota, a judge determines a bail amount that can be paid to release that person from jail. The money can later be refunded to a defendant, but the payment system is an effort to ensure people show up for court hearings and to limit public safety risks. (Many argue it's ineffective.)

There are two ways to pay bail. One is by posting the full amount. The other way to pay bail is through bail bonds, a private, regulated for-profit system. Those bond companies will bail out a defendant but charge a non-refundable fee. (A judge can also set a less expensive bail if defendants agree to meet certain conditions upon release.)

In Minnesota, when a person is released through a bond company, that bonding business is publicly identified. But when someone posts cash bail for a defendant, they don't have to identify themselves.

That difference drew attention last year when the Freedom Fund brought in more than \$30 million in donations after Floyd's killing and bailed out several people charged with violent crimes. Fox 9 News, [which reported the story](#), found out the Freedom Fund was involved because defendants had signed affidavits promising to pay back the

nonprofit for any bail money refunded to them. Those affidavits became court records.



State Rep. Paul Novotny

The Freedom Fund is known in part for bailing out arrested protesters, but the nonprofit also strives to bail out others, regardless of the charges against them, particularly if they are people of color or low-income defendants. Those groups are less likely to be able to pay for bail, and are therefore more likely to stay in jail awaiting trial or resolution to their cases compared to people with more money.

Freedom Fund leaders also see their charitable bail practices as a way to help balance a system that [disproportionately imprisons people of color and Native Americans](#).

The Freedom Fund irked GOP lawmakers when it bailed out some people charged with violent crimes, however. The nonprofit even appeared to rankle the Hennepin County Attorney's Office when the fund bailed out a Minneapolis man facing weapons charges — and then bailed him out again after he was charged with second-degree riot following a "New Year's Eve melee in downtown Minneapolis," [according to a county news release](#).

Bill aimed at Freedom Fund

Republicans who control the state Senate have [advanced a bill](#) that would regulate charitable bail organizations like the Freedom Fund and block them from posting bail for

people charged with violent crimes or offering bail to people who have previously been convicted of a violent crime.

It also makes public the name of the charitable bail group when they pay to release someone.

The measure is unlikely to go anywhere in the House, where Democrats hold a majority, and most DFL legislators support groups like the Freedom Fund and hope to eliminate the cash bail system for nonviolent crimes. But another, [more narrow bill](#), did get a hearing in the House last week.

Sponsored by Novotny, the Elk River Republican, the measure would make public the name of a person or organization that posts cash bail for someone held in custody in connection to violent crimes, including assault, burglary and arson. It would not put other limitations on groups like the Freedom Fund.

Novotny said the bill would make it easier for the public to know who is bailing out people charged with violent crimes. If that information is available at all through affidavits currently, it may only be accessible in person. “Right now, unless you physically go down to Hennepin or Wright County or wherever it is and know the right place to go and go to the right person at the courts to get the actual physical file, you can’t know, you can’t figure it out,” Novotny said. “If it’s somebody that bailed out in Warroad and you wanted to know why are they out, who put up the money for this, you’d have to physically go up to Warroad to do it.”

He also said he hopes the bill would result in more data on bail bonds to better determine if there are disparities in the court system. An [October 2019 report from the Minneapolis Foundation](#) cites research that has found huge racial disparities in pretrial incarceration, including that Black defendants typically face “substantially higher bail amounts compared to white defendants with comparable charges.” But it says Minnesota data is limited.

In December, the Hennepin and Washington county prosecutors said [they will no longer ask for bail](#) for people charged with certain nonviolent felony charges, saying it would reduce the number of Black Minnesotans who are, disproportionately, in county jails.

ACLU and Freedom Fund oppose bill

At the House hearing Friday, Jared Mollenkof, a board member at the Freedom Fund, said the organization opposed the bill because it wouldn't amount to broad reform of the bail system. He also said making third-party bail information public could make life harder for domestic violence victims. Often, alleged victims post bail for someone accused of domestic violence but don't want that information known by the person who hurt them. Novotny, a retired officer for the Sherburne County Sheriff's Office, said a victim might bail out the person who hurt them because they have a job and pay rent or other bills.



Former Public Defender Mary Moriarty

Mary Moriarty, the former top public defender in Hennepin County, said jurors or defense attorneys could still use that information against an alleged victim. "Let's say they came into court and said that they were fearful they could be cross-examined about well, 'You were so fearful why did you post bail?'" Moriarty said. (Novotny said he thought a reasonable person wouldn't hold it against an alleged domestic violence victim.)

Julia Decker, policy director for the ACLU of Minnesota, said people associating the ability to pay bail with risk or danger to the public continues "an inequitable legal system that criminalizes people simply for being poor."

The political left has shown interest in who pays bail at times, too. The Star Tribune [reported in October](#) that Derek Chauvin, who is charged with murdering Floyd, posted bail on a \$1 million bond backed by a bail insurer in New Jersey. But how he afforded that bail is unclear, since the information is private.

Moriarty said that Novotny's bill would not have made public the person who ultimately paid for Chauvin's bail bond. The bail company involved is already public.

At its heart, Moriarty said Novotny's measure "discriminates against poor people," in that it needlessly highlights alleged crimes by low-income people over richer people who are bailed out for the same crimes with far less public attention or scrutiny. It wouldn't collect relevant data to determine disparities, she said.

One leading voice criticizing charitable bail organizations like Freedom Fund is the bail insurance industry, which underwrites and profits off the private bond system.

But Jeffrey Clayton, executive director of the American Bail Coalition, which represents the insurance companies, said they would rather see regulations similar to the ones that guide his industry placed on charitable bail organizations instead of disclosure requirements.

Key DFLer doesn't shut the door on bill

Despite opposition from the ACLU and Freedom Fund and at least some Democrats, Mariani, the St. Paul DFLer who chairs the House public safety committee, said he's considering including the measure in a larger "omnibus" package of criminal justice legislation approved by Democrats.

Mariani said he believed lawmakers should focus attention on bigger changes to a "flawed" bail system and disparities in incarceration and agreed with concerns about how the GOP bill might affect domestic violence victims. But he said he held the hearing on the bill to create a dialogue on bail reform and try to spark bipartisan interest in the topic.



State Rep. Carlos Mariani

Mariani also said Novotny's bill was the "least troublesome" measure related to charitable bail and characterized it as just making existing data more available for the public. He said he doesn't want to negotiate with Senate Republicans on the charitable bail regulations, but didn't close the door on Novotny's measure. "If it buys some element of good faith (with the GOP), we may have it in our omnibus bill," Mariani said. Novotny said his bill is ultimately about transparency. "The next victims should be able to find out who put up the bail for this guy," he said.



Get out of jail free — as Colorado crime soars

Jeffrey J. Clayton March 17, 2021



Jeffrey J. Clayton

Senate Bill 62 is legislation built upon a false premise — never a good idea when lawmakers are trying to sell meaningful change to their constituents. Pushed as a solution by the ACLU of Colorado to reduce jail populations, the organization holds that despite the COVID-19 pandemic, crime was not a problem this past year. Despite large spikes in crime experienced in some jurisdictions, they contend it has nothing to do with the fact that there were simply more criminals on the street.

Some Colorado legislators have embraced this unsubstantiated notion and have offered a dangerous bill that will depopulate jails by not arresting serious offenders and instead giving them a ticket and summons to appear in court. These individuals would be given presumptive releases through personal recognizance bonds, meaning everyone would get out of jail free.

Bear in mind that SB 62 is not about "sleeping on a park bench" types of offenses. Rather, it encompasses all felony class 4, 5, 6 offenses in addition to all misdemeanors.

Law enforcement officials and groups, including Boulder Chief of Police Maris Herold, the Colorado Association of Chiefs of Police and the Colorado Fraternal Order of Police, have come out strongly against restricting the power of officers to make arrests. Opposition has also come from numerous business owners, who noted that their employees have been the targets of assault and their companies subjected to an onslaught of property crimes as a result of the revolving door of arrest and release.

When the ACLU first began lobbying for SB 62, it ran into opposition from law enforcement, which focused on maintaining the power of officers to arrest in high-risk cases. Their response was the creation of numerous exceptions to gain favor with prosecutors and sheriffs' associations. Most notable was an exception allowing officers to make arrests in cases where the law previously required them to do so. This directly addressed Colorado law which called for the mandatory arrest of perpetrators of domestic violence.

The number of exceptions grew longer. Added to the "okay to arrest" list were serious crimes contained in the Colorado Victims' Rights Act, including sexual offenses and crimes involving the illegal use or possession of a firearm.

Thus, despite perpetuating the notion that the majority of crimes did not warrant defendants being incarcerated, those behind SB 62 conceded that, just maybe, an officer should be given a little discretion as to whether they should arrest a suspect and hold them in jail.

All logic behind SB 62 crumbles away when it comes to setting bail involving these same cases. As written, it would set the presumptive bail in all felony 4, 5, 6 and misdemeanor crimes at zero dollars. That is, officers would have the unfettered discretion to arrest, but when it comes time to see a judge to decide pretrial release, their discretion vanishes.

If SB 62 passes, a huge number of individuals charged in mandatory domestic violence arrests and VRA cases, as well as sexual offenses and illegal possession or use of firearm cases would be eligible to be set free on a personal recognizance bond. While there is a narrow exception in the bill that might result in a small percentage of defendants having their bail set, the reality is that the presumption will not be overcome in the vast majority of cases.

It is also important to note that the creation of SB 62 completely circumvented the Colorado Commission on Criminal and Juvenile Justice, despite the fact that it had designed and approved every major reform of the state's pretrial system over the past 15 years.

While reducing the jail population might be considered a laudable goal, Senate Bill 62 is poorly conceived. It takes away the power of law enforcement officers to arrest individuals charged with dangerous crimes and then turns them loose back on to the streets on their "personal promise" to appear in court — a guaranteed recipe for disaster. Legislators working to achieve meaningful criminal justice reform is one thing, but handing out "get out of jail free" cards is not the answer for Colorado.

Jeffrey J. Clayton is executive director of the American Bail Coalition. He is a licensed attorney based in Denver and has served a variety of clients in legal, legislative and policy matters.

Macomb County LEGAL NEWS

Posted March 19, 2021

Do racial preconceptions skew pretrial assessments?

By **Michaela Paukner**
BridgeTower Media Newswires

MILWAUKEE, WI — As calls for racial justice intensify throughout the country, so have efforts to reform aspects of the criminal justice system, including pretrial-detention practices that keep hundreds of thousands of legally innocent people behind bars.

The Prison Policy Institute recently reported pretrial detention is responsible for nearly all of the net growth in the jail population in the past 20 years. Seventy-four percent of the U.S. jail population — 550,000 people in total — haven't been convicted or sentenced.

When deciding who should be detained and who should be released, many courts rely on pretrial-assessment systems. These are meant to offer an unbiased, objective means of estimating the chances that a defendant will fail to appear for future court dates, commit new crimes or commit new violent crimes after release.

Some argue the systems are actually making racial discrepancies worse. One such group is the American Bail Coalition, an association of national bail insurance companies and bail agents. Jeff Clayton, executive director of the coalition, said pretrial-assessments systems have racial bias built into them.

“Nobody bothered, when they built these things, to test for racial bias or think about racial bias, and now that's come to the forefront,” Clayton said.

One of the most widely used systems is the Public Safety Assessment, which was developed by the Laura and John Arnold Foundation.

Advancing Pretrial Policy and Research, an initiative paid for by the PSA's developers, provides guidance to organizations on the proper use of the system. Alison Shames, co-director of APPR, said the PSA is objective.

“In terms of our validation studies that have been done to date, these show that the PSA predicts equally well for people across race and ethnicity,” Shames said.

Trouble arises, though, when bias stems from the data that are coming into the system. This can happen, for instance, when the police arrest people of color at disproportionate rates, Shames said.

“The challenge is that bias is endemic to the criminal justice system and to the data itself,” Shames said. “The data that comes into this tool has the bias of whatever the community might have.”

What the PSA does

The PSA uses a defendant's criminal history to come up with a score that judges and court commissioners can use to make decisions. In doing so, it considers nine factors.

Each is weighted and assigned points.

The factors are then converted to scales of 1 to 6 for "Failure to Appear" and "New Criminal Activity" categories. A person can also be flagged for risk of new violent criminal activity.

The criteria don't change. But when a court makes use of the PSA, it also develops a custom chart to help judges and court commissioners interpret what bearing each score might have on a defendant's prospects for release.

The chart, known as the Release Conditions Matrix, varies from place to place depending on what resources can be found in each. For example, some jurisdictions may carry out criminal history checks once a month and require electronic monitoring or drug testing for certain scores.

APPR strongly recommends jurisdictions work with local policymakers and residents on the matrix. Shames said the organization also recommends every jurisdiction complete its own validation study to find out how accurate the PSA is at the local level.

APPR publishes the results of validation studies on its website. These usually vary from one place to the next, as do the reports' contents. Some counties have assessed the PSA through the lens of race, whereas others have considered populations as a whole.

Of the five studies on the website specifically analyzing the PSA, three considered the effect defendants' race might have had on outcomes. The studies found no statistical difference in the rates of pretrial release among the various groups.

PSA in practice

Clark Rodgers is one of two people in Dane County who put data into the PSA to obtain defendants' scores.

He has decades of experience working with pretrial assessments, first with U.S. Probation and Pretrial Services for nearly 23 years.

Rodgers said the county runs the assessment on criminal felonies resulting from new arrests, new arrests with holds and new arrests with probation holds — although there are some exceptions.

A person is determined to have undergone a new arrest when he or she has been in custody for less than three days. On the weekend of Aug. 29-30, Rodgers said 29 of the people arrested qualified for PSAs.

An assessment typically takes 15 minutes to an hour to complete. Rodgers and Maggie Thomas, the other pretrial assessor for Dane County, use data from the Spillman jail management program, CCAP and other records databases to complete their assessments. They also obtain out-of-state records to learn whether points should be assigned.

Rodgers said he doesn't track the outcomes of the PSA's assessment — that's done by the county's equity and Criminal Justice Council coordinator — and he sees questions about racial disparities in outcomes as policy issues.

“Maggie and I try to keep our personal opinions out of it because we’re trying to be objective, and we take that really seriously,” Rodgers said. “We’re trying to make sure any bias we may have doesn’t affect the decisions we make.”

‘Fatally flawed’ tool

Even before Dane County’s pretrial assessors start putting information into the PSA, Clayton and the American Bail Coalition believe they were set up for failure. He said the trouble lies in the algorithms that risk-assessment systems use to generate scores; they, he said, are inherently biased.

Clayton cited studies of the Colorado Pretrial Risk Assessment Tool and COMPAS Risk & Need Assessment Systems, both of which researchers had used to predict outcomes for defendants of various races. Clayton said the systems, when wrong, over-predicted risks concerning Black defendants and under-predicted risks for white defendants.

The creators of the PSA haven’t subjected the tool to such an analysis, Clayton said. Rather, they argue the tool’s accuracy is the same among racial groups.

Clayton said the PSA’s creators are OK with a tool that gets it wrong, as long as it gets it wrong at the same rate for each group of defendants.

“Because the science breaks down, there’s no scientific way for judges to then correct it,” Clayton said. “That’s why the process is fatally flawed.”

Rather than rely on pretrial-risk assessments, Clayton said judges should be using their own discretion.

“There’s been no evidence that a tool does better than judicial discretion in terms of racial bias or any other measure that you want to use,” Clayton said. “We’ve spent millions of dollars to evaluate millions of defendants, and we’re wasting that money that could be spent on diversion, drug rehabilitation, etc.”

But such a reliance on judicial discretion alone is exactly what the PSA is meant to avoid.

“Without (the PSA), you have a judge making a decision based on their own biases and their own subjective experience,” Shames said. “They’re looking at the same data that goes into the tool, but they’re making their own decision about it, or they’re basing something on a charge and attaching a financial condition to it that may keep someone in jail.”

Shames said the PSA shows judges that most people won’t get arrested while on release and can also be counted on to show up for their court dates — no matter their race. Even so, she said, the system is only as good as its data.

“The PSA doesn’t produce the bias,” Shames said. “It is just using data that has some bias baked into it, but it is at least giving judges information to help them make more consistent and more transparent decisions.”

Shames said APPR does make it a point to talk to users about ways that bias can be introduced by whatever data are coming into the PSA.

“No tool can eliminate the racial bias that exists in a system,” Shames said “As jurisdictions confront that and their arresting and sentencing practices are reformed, then the data will be better going into the system, and the tool will better and accurately predict.”

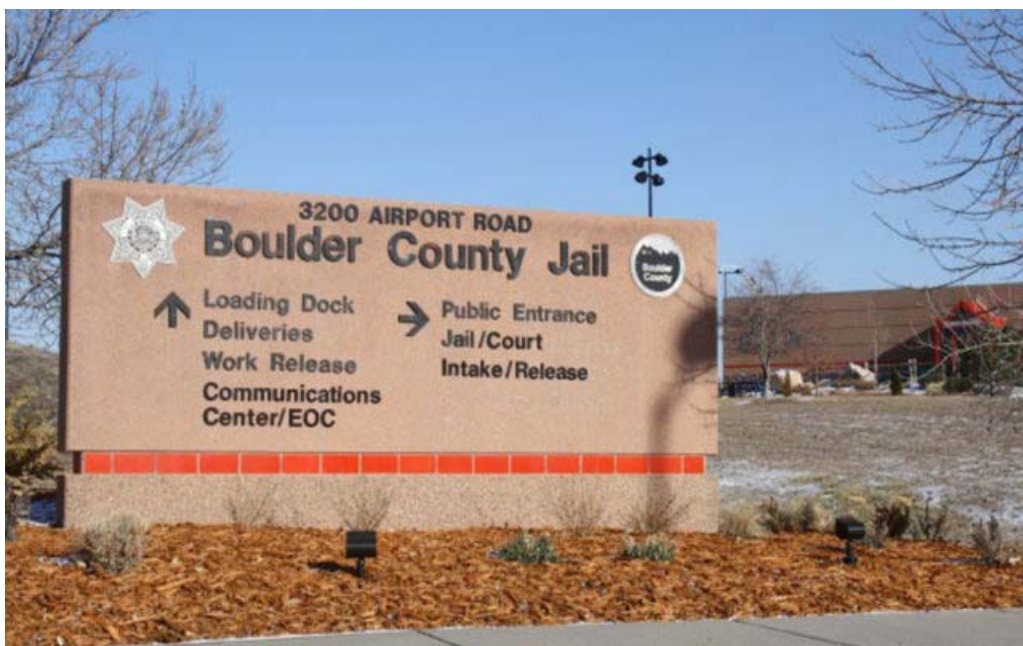
APPR views the PSA as one way to help improve pretrial procedures.

“What this is really about is releasing people, not detaining people,” Shames said. “What we know from the data we have from PSA results and other data across the pretrial field is people on pretrial release success the vast majority of the time.”

[news](#)

Boulder could play central role in shaping state pretrial reform legislation

By [Angela K. Evans](#) - March 25, 2021



Boulder has become the center of a robust debate about criminal justice reform as legislation proposed by the ACLU and introduced in the Colorado Senate has drawn criticism from local law enforcement, businesses and residents. If passed, Senate Bill 21-062 would increase law enforcement discretion to use summons instead of arrest, requiring it for low-level misdemeanor and felony offenses like traffic violations and drug offenses where public safety or ongoing criminal behavior aren't a concern. It also builds off a 2019 law that eliminated cash bail for petty offenses by requiring courts to instead use personal recognizance bonds for limited misdemeanor or low-level offenses, unless the person is considered a flight risk. Lastly, it codifies the authority local sheriffs have been using during the pandemic to safely reduce their jail populations.

Sponsored by Democratic Sen. Pete Lee of El Paso County, the legislation is an effort to decrease Colorado's overcrowded jails, populated in large part by pretrial detainees. It was developed through a stakeholder process, including law enforcement groups. Many of the proposed changes come out of public health policies implemented at jails around the state during the coronavirus pandemic. For example, the ACLU released a report in October that found the increased use of

summons and heightened arrest standards used during COVID led to a 48% drop in people being held pretrial on misdemeanor charges across the state.

But at a March 4 Senate Judiciary Committee hearing deliberating the bill, advocates of the legislation were surprised to hear pushback from Boulder, largely seen as a partner in issues of criminal justice reform. Local Boulder business owners, as well as Chip from Downtown Boulder, testified against the bill, citing increased break-ins on the Pearl Street Mall. Boulder Police Chief Maris Herold also opposed the bill, citing increased property crime statistics in the last year and comments she's heard from the community and seen on social media questioning public safety.

"I feel like the community feels like the police cannot protect them," she said. "The anxiety in Boulder right now is high."

Louisville Police Chief Dan Hayes, also testified against the bill calling it "anti-victim."

And the legislation has some more obvious opponents. The American Bail Coalition, represented by Jeff Clayton based in Denver, specifically opposes the cash bail provisions of the bill, saying that it significantly reduces judge's discretion, offering limited exceptions. He thinks the same discretion afforded at the time of arrest should also be given to judges. For example, as it's written now, "mandatory DV [domestic violence] arrests are presumptive zero bail," he says, "which is really crazy that it's important enough for an officer to have discretion to arrest on the street, but it's not important enough for a judge to have discretion."

To be clear, the bill does allow judges to set monetary bond for anyone considered a public safety or flight risk, including those accused of domestic violence.

Overall, Clayton cautions Colorado in adopting legislation limiting cash bail that other states have passed and rolled back, like what's recently happened in New York.

However, the bill's supporters say this is all part of the criminal justice reform Boulder so frequently advocates for.

"Pretrial reform is something that we work on every session, and this is the next iteration of that work," says Denise Maes, public policy director of the ACLU of Colorado. She adds that aspects of this bill have been discussed for years, some of it was even included in a large bipartisan criminal justice reform bill proposed in early 2020 that ultimately fell to the pandemic chopping block.

While law enforcement across the region say there's been an uptick in certain types of crime over the last year of the pandemic — vehicle thefts and property crimes, like breaking into cars, in particular — it's difficult to connect that directly to jail population size.

"There are two things that I know to be true, and that is crime is real and the fear of crime can even be worse," Maes says. "And I get that Boulder has seen spikes in certain types of crimes, but there is no data to support that that increase in crime is correlated to the decline in the jail population."

Both Boulder County Sheriff Joe Pelle and District Attorney Michael Dougherty, who have taken a neutral position on the legislation, agree it's difficult to make a direct correlation between increased crime and the current jail restrictions, citing more complex factors driving recent crime increases.

"I think it has to do with the financial strain on individuals, the lack of behavioral health treatment, especially during the pandemic when people can't connect in person," Dougherty says. "I think it's partly fewer witnesses being out on the streets. We see less crime when there's more people outside."

Both Pelle and Dougherty expect these types of crime to decrease significantly as the pandemic wanes, and express their continued commitment to criminal justice reform. Since Pelle was first elected 18 years ago, he says there's been pressure to reduce the jail population.

"When we're trying to fix problems, like angry, upset, semi-violent people, because they're mentally ill or high on drugs, the jail isn't going to fix it," Pelle says. "And now there's a lot of pushback saying we need to put people in jail, so it's been an interesting twist."

Dougherty adds, "I think if this bill were introduced a year from now, I imagine there'd be far less focus, attention and concern on it."

In other words, the timing of the bill also plays into some of the community resistance.

"The constant threat to criminal justice reform is if people in the community lose faith, because they think public safety is being jeopardized, that's when they start to speak out," Dougherty says. "I think that's what we're seeing right now is just the perception that because property crimes have gone up, people are less safe than they used to be."

Dougherty says Boulder is safe, however, relative to other communities, and public safety is his office's top priority. (*BW* interviewed the DA prior to the mass shooting on March 22, but it's a sentiment he reiterated during press conferences following the event.)

Misinformation is swirling around the debate as well. Pelle says he's getting community questions about why the jail is closed (it's not), or how people are being assaulted, or stores broken into, or how suspects aren't booked into jail (they are). But jail capacity is still limited due to certain social distancing and COVID precaution measures in place, and law enforcement has expressed frustration about the jail not taking more people into custody, Pelle says.

Since last March, the population has hovered between 280 and 300, Pelle says, still higher from the early months of the pandemic, when it dropped below 200, but also down from its height of 460 daily average pre-pandemic.

Overall, Pelle says what's proposed under SB 62 more closely resembles the County's arrest standards pre-pandemic. What the bill would do, however, is codify that across the state, he adds. When it comes to cash bail, while the bill may change things for other places, it won't change much in Boulder County, Pelle says, given that community corrections and pretrial services have been used instead of monetary bonds for a while.

"This is the work, what criminal justice reform is, and I'm having a lot of conversations with folks in Boulder who want criminal justice reform on a national level," says Elizabeth Epps, founder of the Colorado Freedom Fund, a community bond initiative, and a community organizer with the ACLU's Bring our Neighbors Home initiative. "And they support the George Floyd policing act, they have these big-picture ideas of progress, but when it comes to what that looks like in their own communities, they're incredibly resistant."

Among the bill's individual supporters are Denver DA Beth McCann, Colorado Attorney General Phil Weissner, and La Plata County Sheriff Sean Smith. Both the County Sheriffs of Colorado and the Colorado District Attorneys Council have taken a neutral stance on the legislation. The state's large, well-funded victim advocacy groups have all taken a neutral position on the bill, as well, and many victims testified in favor of it at the judiciary hearing, advocates point out.

The Boulder Chamber has yet to take a position on the bill, but president and CEO John Tayer says he's following the bill, wanting to make sure law enforcement has

tools to address crime and repeat offenses, as well as ensure civil rights protections for individuals.

“Boulder Chamber wants to make sure that whatever position we take on the legislation is thoughtfully balancing public safety, as well as respect for those who are accused of criminal behavior,” he says.

The Senate Judiciary Committee eventually passed the bill 3-2 along party lines. It’s currently in Senate appropriations, given its \$93,000 general fund price tag. It will then go to the full Senate for discussion (expected in the next several weeks), which is where more amendments could potentially come into play.

Dougherty says he plans to meet with the ACLU to continue conversations about amending it further, and the City of Boulder appears to also want amendments.

On March 18, Boulder’s Intergovernmental Affairs Committee discussed the bill with many initially wanting to take an oppositional stance. Council member Aaron Brockett, however, cautioned against such a strong position, advocating instead for the City to work with the bill’s authors on amendments to clarify and address issues raised by Boulder’s business and law enforcement community.

“Moving away from an arrest and jail-based approach to enforcement of minor offenses is a positive direction to go in,” Brockett says. “And this is in the context of the United States as a society that experiences mass incarceration particularly with people of color and African-Americans, we need to be moving away from using jail as a tool for too many situations.”

Like the rest of Boulder’s public officials, Brockett is concerned about increased crime in the last year, however, he attributes a lot of it to the pandemic and doesn’t expect it to continue as the public health emergency fades.

“We’ve heard from a lot of people in the community that they’re worried that this bill would sort of keep the current problematic state of things and make it permanent,” he says. “That’s not the intention of the bill.”

Instead, he’s advocating Boulder lobby for certain amendments that would add specificity to some of the exceptions and clarify which serious crimes could still result in an arrest. For example, currently the bill allows for an arrest if someone is in possession of a firearm, but Brockett would like to include other deadly weapons like knives or machetes.

In the end, the Intergovernmental Affairs Committee agreed not to oppose the bill, but instead take an “amend” position. The full City Council is scheduled to discuss the legislation at its next regular meeting on April 6.

“Personally, I don’t think we should oppose this bill,” Brockett says. “I think we should work to improve it because I think it’s going in good directions.”

A spokesperson for Boulder Police Chief Herold told *BW* in an email: “Chief Herold is currently busy working on amendments on the bill with impacted organizations.”

Maes says she’s aware of the City’s amend position, and has some indication of what changes, at least conceptually, the City would like to make, but the ACLU has yet to have any substantial discussions about new amendments.

“Putting more and more people in jail is not the answer to any of our societal woes. And it’s certainly not the answer to crime,” Maes says. “The fact is that we have had an addiction to jails and prisons for a long time, and yet we are no safer as a result of them. So we need to find a different way.”

While many within Boulder County are still debating SB 62, everyone seems to agree on one thing: They want to see more done at the state legislature to address

issues of substance and mental health, which for years has been the largest contributor to high jail populations.

“I also think we have to work on the substance abuse and mental health issues that people experience as an initiative in and of itself,” Brockett says. “The support that we have in our society for people experiencing those issues is really lacking.”

This story has been updated to clarify judges' discretion in setting bail. We apologize for the confusion.



REUTERS®

MARCH 26, 2021 / 3:07 AM / UPDATED 2 HOURS AGO

U.S. bail-bond insurers spend big to keep defendants paying

By Alwyn Scott, Suzanne Barlyn

9 MIN READ

NEW YORK (Reuters) - Insurance companies have spent \$17 million to defeat proposals to weaken or abolish the for-profit bail industry in the United States, a system that brings insurers \$15 billion in business a year, according to a Reuters analysis of campaign contributions, company financial statements and interviews with more than three dozens experts on criminal justice, campaign finance or bail.



FILE PHOTO: The Los Angeles County Men's Jail is seen in Los Angeles, California, U.S., February 16, 2021.
REUTERS/Lucy Nicholson

The spending has jumped more than 10-fold since 2010 as insurers have led the industry's lobbying effort, targeting laws in more than a dozen states, the analysis shows.

The industry opposition comes as President Joe Biden and other Democrats have renewed calls to dismantle what they describe as a biased system that harms mostly low-income people.

Illinois last month enacted a law to abolish cash bail by 2023, but it had already ended for-profit bail in 1963.

The insurance industry has succeeded, however, in beating back such measures in other states, allowing insurers to increase sales even as public pressure grows to reduce or eliminate cash bail. In 2019, bail insurers increased premium income by 8%, according to insurance credit agency AM Best.

(For graphics on U.S. bail bond issuance, and industry spending on lobbying and campaign contributions, see: tmsnrt.rs/3rc4nbJ and tmsnrt.rs/3d06nij)

Bail is meant to ensure people charged with crimes appear in court. Amounts range from as little as a few hundred dollars to \$100 million or more. Defendants who post the full amount are freed pending trial and typically get their money back.

Those unable to afford bail can buy a “bail bond” - insurance guaranteeing that the full bail will be paid if they don’t appear for court dates. Defendants are charged a nonrefundable fee, typically 10% of the bail, by a bail agent, and often are required to pledge homes and cars as collateral. The fee is split between the bail agent and the insurer.

Insurers and bail agents say their services keep communities safe from violent criminals while protecting the constitutional right to pretrial release for the accused.

Critics of for-profit bail - which exists only in the United States and the Philippines - say it often becomes a debt trap for poor defendants, who are disproportionately minorities. Some borrow money for their bond fees from bail agents on installment plans at high interest rates. The American Civil Liberties Union told Reuters it has seen rates of about 30%. That can leave defendants repaying long after their court cases are closed.

Bail bonds are lucrative for insurance companies. The gross profit margin of bail bonds, after paying claims and related expenses but before other costs, averages 83%, compared with 33% for insurers covering autos and homes, according to the latest data from AM Best and Refinitiv.

The industry has consolidated in recent years, with the top six bail insurers now controlling 76% of the market, according to AM Best.

The largest is St. Petersburg, Florida-based Bankers Financial Corp, which generated \$244 million in bail-related premiums in 2019, according to AM Best.

Through a subsidiary, Bankers is a member of an insurance industry group called the American Bail Coalition, or ABC, that uses contributions from its seven insurance company members to preserve for-profit bail. The group also uses donations from bail agents, and its efforts include online ads, media buys and political lobbying, according to the ABC, state records and social media disclosures.

“I don’t think anybody wants to give the federal government or state prosecutors more power to detain or to deny bail,” Jeff Clayton, executive director of the ABC, said in an interview.

Bankers did not respond to requests for comment. Other ABC members did not respond or referred questions to the trade group.

TAKING ON CALIFORNIA

The coalition’s most recent success was in California, the nation’s biggest bail market, home to 3,200 bail agents and 21 bail insurers. In 2018, the state passed a law, known as SB-10, to replace cash bail with a system that would give judges - aided by a computer algorithm - discretion to decide which defendants posed a danger or flight risk. Most minor offenses would not require the assessment.

Such minor offenses, known as misdemeanors, account for about 80% of U.S. criminal cases filed annually - and thus the bulk of detention and bail decisions, said Alexandra Natapoff, a Harvard Law School professor who has studied the extent and impact of such arrests.

But California’s new law never went into effect. The ABC spent \$2.8 million, raised mainly from insurers, gathering signatures for a ballot initiative that would allow voters to decide the fate of SB-10. The law’s implementation, originally scheduled for October 2019, was postponed pending the vote.

The ABC then led a campaign to urge Californians to vote “no” on the initiative, known as Proposition 25, spending more than \$7 million donated by insurance and bail bond companies, according to state records analyzed by Reuters.

The campaign alleged risks to public safety. It also sought to persuade Californians, particularly voters of color, that the new law would give judges too much power and that the algorithm would produce more racial bias than the current system.

The ABC-led campaign spent \$102,702 on Facebook ads, according to Facebook, including a video of rapper Waka Flocka Flame that garnered as many as 450,000 screen views.

“If you truly advocate for social justice, I want you to vote ‘no’ to Prop 25,” the rapper said in the video. Through a spokesperson, Flame said he was not paid and was unaware of the video’s use on Facebook. He declined further comment.

Another ABC-sponsored ad showed Alice Huffman, then-president of the California-Hawaii unit of the National Association for the Advancement of Colored People (NAACP). Huffman in the ad said the algorithm could racially profile Black people. “The NAACP asks you to vote ‘no’ on Proposition 25,” she said.

Californians rejected the law with 56.4% of the vote on Nov. 3. Later that month, Huffman announced she would step down, citing health issues, after local media reported that the ABC campaign paid her consulting company \$200,000 in 2020. Reuters verified the amount with state records.

The ABC declined to comment. Huffman did not respond to requests for comment. Rick Callender, who succeeded Huffman as local NAACP president, said the organization has opposed cash bail since 2017 and “is committed to ensuring that the values and positions of the NAACP are adhered to.” He declined comment on Huffman’s stance or the ABC’s payments to her.

Several progressive groups also opposed SB-10, saying its reliance on an algorithm would perpetuate racism and give too much power to judges.

But it was the ABC, in leading the campaign to get the measure on the ballot, that preserved cash bail in California.



system.

“Clearly, the bail bond industry sees this issue is gaining national momentum and will do whatever it takes to stop it,” said Robin Steinberg, founder and chief executive officer of The Bail Project, a national not-for-profit organization working to change the U.S. pretrial

CAMPAIGNS NATIONWIDE

The industry has also battled bail eradication efforts in Florida, Texas, Colorado, New York and other states over the past 10 years.

In that time, bail industry spending on lobbying, campaigns and candidate contributions soared to more than \$23 million, from \$4 million

in the prior decade, according to FollowTheMoney.org, part of the nonprofit National Institute on Money In Politics.

In January 2020, a new law in New York had the effect of allowing 87% of those arrested to be released without bail or pretrial detention.

Bail and law enforcement groups claimed the measure would cause more crime, and continued to try to sway public opinion.

Among the ABC efforts was a Facebook page titled “Safer Communities.” The page is not identified as being set up and run by the ABC, though it is managed by an ABC staffer, according to Facebook.

Safer Communities also ran Facebook ads about crime and bail, including one that described New York’s law as “dangerous.”

Clayton, the ABC executive director, said his group sees the Safer Communities page as a “neutral” way to engage viewers about bail policy issues.

The tactics proved effective. Public opinion polls showed support for New York’s new system eroding.

By April 2020, New York legislators had proposed a longer list of offenses for which bail could be set, which Governor Andrew Cuomo signed. The amendments became effective in July 2020, adding 35 crimes for which judges could require defendants to post bail.

The ABC’s Safer Communities campaign continues. It is now targeting a Colorado bill that would expand on bail reform measures enacted there in 2019.

A March 11 post urged readers to “TAKE ACTION” to stop the bill.

Reporting by Alwyn Scott and Suzanne Barlyn. Editing by Tom Lasseter and Marla Dickerson



California high court: Judges must weigh ability to pay bail

By DON THOMPSON

March 26, 2021



FILE - In this Dec. 23, 2015, file photo, a number of bail bonds offices are seen across from the Hall of Justice in San Francisco. The California Supreme Court ruled Thursday, March 25, 2021, that judges must consider suspects' ability to pay when they set bail, essentially requiring that indigent defendants be freed unless they are deemed too dangerous to be released awaiting trial. (AP Photo/Eric Risberg, File)

SACRAMENTO, Calif. (AP) — The California Supreme Court ruled Thursday that judges must consider suspects' ability to pay when they set bail, essentially requiring that indigent defendants be freed unless they are deemed too dangerous to be released awaiting trial.

“The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional,” the justices said in a unanimous decision.

Judges can require electronic monitoring, regular check-ins with authorities or order suspects to stay in shelters or undergo drug and alcohol treatment, Associate Justice Mariano-Florentino Cuéllar wrote on behalf of the court — conditions that “in many cases protect public and victim safety as well as assure the arrestee’s appearance at trial.”

However, “where a financial condition is nonetheless necessary, the court must consider the arrestee’s ability to pay the stated amount of bail — and may not effectively detain the arrestee ‘solely because’ the arrestee ‘lacked the resources’ to post bail.”

The decision comes after voters in November rejected a state law that would have ended California’s cash bail system entirely by substituting risk assessments for every suspect, and after months when a judicial order set bail at \$0 for lower-level offenses during the coronavirus pandemic. The court’s ruling allows cash bail, so long as defendants can afford it.

“It’s going to be a big change in the way the system works,” American Bail Coalition Executive Director Jeff Clayton said on behalf of California’s bail industry, noting that it

is similar to an April ruling by the Nevada Supreme Court. “The lens of due process is going to be on every bail, because prosecutors are going to have to prove, by clear and convincing evidence, a flight risk or danger” if they seek to keep a lower-income suspect in custody.

There will be fewer bails set, and at lower levels, though he said the impact on the bail industry is uncertain. Also uncertain is the effect on public safety, Clayton said, because prosecutors can still argue for detaining those they think are dangerous or likely to flee.

The justices cited the same unfairness concerns that led state lawmakers to pass the 2018 law that would have ended cash bail, and that is driving new proposed legislation to set bail at \$0 for misdemeanors and low-level felonies.

The ruling and the pending legislation “go hand in glove” because the Legislature must now decide which alleged crimes should require \$0 bail, said Democratic state Sen. Robert Hertzberg, who is leading reform efforts.

California Police Chiefs Association President Eric Nunez said no one should be jailed solely because they can’t afford bail, but “a rigid zero-dollar bail scheme shouldn’t prevent a judge from considering public safety risks for serious and repeat offenders.”

The high court’s ruling “doesn’t eliminate bail completely, but it eliminates the unfairness of bail,” Hertzberg said. California’s bail system “just spun out of control and this brings it back to its core principals of what bail is supposed to be about in the first place.”

Bail is money or property that can be forfeited if suspects fail to appear for trial. Previously, judges set bail based on suspects’ criminal records and pending charges. Critics said that let wealthy suspects go home to prepare for trial while lower-income defendants stayed locked up, a system they said encouraged some innocents to plead guilty to get out of jail.

The decision was hailed by reform groups, while the California District Attorneys Association didn’t object and said prosecutors have long felt there should be thoughtful reform, including on the financial issue.

“The research is clear, the negatives of cash bail fall disproportionately on Black and Brown communities without improving safety,” said Chief Probation Officers of California Executive Director Karen Pank. “Wealth should play no role in the justice system and we will continue to fight for a pretrial system that focuses on safety, fairness and effectiveness.”

While it considered the case, the high court in August took the extraordinary step of requiring California judges to follow a lower court ruling and set bail amounts based on what suspects can afford to pay.

That ruling was supported by then-Attorney General Xavier Becerra, who is now President Joe Biden’s health and human services secretary. To replace him, Gov. Gavin Newsom on Wednesday nominated Assemblyman Rob Bonta, a leading proponent of ending cash bail.

“The jail house door shouldn’t swing open or closed based on how much money you have in your pocket,” Bonta said Thursday.

Judicially creating a new “ability to pay” consideration violates the Victims’ Bill of Rights Act, also known as Marsy’s Law, approved by California voters in 2008, the Criminal Justice Legal Foundation argued in a friend of the court brief.

The foundation, which represents the interests of crime victims, contended that making cash bail contingent on suspects’ ability to pay violates state law, which allows for considering the safety of the public and victim, the seriousness of the alleged crime, the suspect’s criminal record, and the likelihood that he or she will flee.

Judges already had the ability to release suspects on their own recognizance, foundation attorney Kymberlee Stapleton said after the ruling.

“The money bail is there to ensure that they do come back for their trial date, and they’re incarcerated to protect the victim or the public,” she said. “It’s hard to tell what impact this will have on victim and public safety going forward.”

The high court’s ruling came in the case of 66-year-old Kenneth Humphrey of San Francisco, who was jailed for more than eight months because he couldn’t post \$350,000 bail on charges of stealing \$5 and a bottle of cologne from a neighbor in a senior housing complex in May 2017.

The Association of Deputy District Attorneys in Los Angeles County noted that Humphrey has a long criminal record and so faced a potentially long prison sentence on charges including robbery and residential burglary. He is alleged to have demanded money from a 79-year-old man who uses a walker, then followed the victim into his apartment where he stole the items.

“Pretrial liberty should be the norm and not the exception,” said San Francisco Public Defender Mano Raju. He said he spoke Thursday to Humphrey: “He’s thrilled.”

San Jose Mercury News

‘Gigantic momentous decision’: California Supreme Court shrinks role of cash bail in jailings

Landmark ruling directs judges to expand use of non-jail alternatives and affordable bail, and increases burden to justify public-safety detainments



SAN JOSE, CA – OCTOBER 12: A Bad Boys Bail Bonds' truck and an All-Pro Bail Bonds' store sign are seen on Oct. 12, 2020, in San Jose, Calif. (Dai Sugano/Bay Area News Group)

By [NICO SAVIDGE](#) | nsavidge@bayareanewsgroup.com and [ROBERT SALONGA](#) | rsalonga@bayareanewsgroup.com | Bay Area News Group
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In a landmark opinion hailed as a victory for civil-rights advocates and criminal-justice reformers, the Supreme Court of California ruled Thursday that judges must consider an arrestee's ability to pay when setting bail and must enforce a higher standard for jailing someone before trial on public-safety grounds.

[The high court's unanimous ruling](#) seeks to ensure that no one is kept behind bars while they await trial only because they can't afford to post bond. And it scales back the role of money bail in deciding who gets out of jail by directing judges to more widely consider non-cash conditions, such as electronic monitoring programs and drug or alcohol treatment, to ensure defendants can be safely released.

"The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional," Justice Mariano-Florentino Cuéllar wrote in the court's opinion. "What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail — and may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail."

David Ball, a Santa Clara University law professor who specializes in criminal procedure, called the ruling “a gigantic momentous decision.”

Ball said he anticipates that arguments over pre-trial release in California courtrooms, which previously focused on what bail amount was appropriate for each defendant, will instead shift toward a focus on public safety.

Judges will still have the authority to order a defendant held without the option of bail if they believe the person to be a safety risk. But the opinion states judges must find by “clear and convincing evidence” that the defendant must be kept behind bars to protect the public, which Ball said would lead to more in-depth discussions of whether a person poses a risk.

“You can no longer get around the decision about detaining someone on the basis of public safety by setting an unaffordable bail,” Ball said.

The high court’s opinion is the culmination of a years-long legal challenge to California’s cash bail system brought by the San Francisco Public Defender’s Office and the nonprofit Civil Rights Corps.

Opponents of cash bail have long argued the system can mean poor defendants who pose little risk to society, and are presumed innocent until proven guilty, can wind up behind bars for months or years because they don’t have enough money to bail out. Top Democratic politicians, including President Joe Biden, have joined in on calls to abolish cash bail in recent years.

Defendants could lose their jobs, housing or even custody of their children if they are locked up while their cases play out, advocates say, and the time behind bars ramps up pressure to strike plea bargains with prosecutors rather than wait to take their case to trial.

“The injustice of our bail system in this state has been devastating,” said Gina Clayton-Johnson, executive director and founder of Oakland’s Essie Justice Group. “Bail has been the mechanism that has made mass-incarceration possible.”

The case before the state Supreme Court [unfolded separately from another attempt](#) to overhaul California’s cash-bail system that voters rejected last November. That ballot measure, Proposition 25, would have upheld a state law passed in 2018 to end the cash-bail system and replace it with one in which judges decided who to release based on an assessment of their risk to the public.

The bail bonds industry and law enforcement groups that opposed the proposition argued that requiring defendants to put up cash is the best way to ensure they show up for future court dates.

Thursday’s Supreme Court decision does not abolish the cash-bail system altogether. But Jeffrey Clayton, executive director of the American Bail Coalition, said the ruling would likely mean fewer defendants will have to post bail and those who do would be required to put up less money. Still, Clayton said, “We are prepared to live with it.”

The Chief Probation Officers of California, an organization whose members stand to see a significantly increased workload as the guardians of pretrial monitoring and supervision for the vast majority of state trial courts, said Thursday it was up to the task.

“After today’s ruling, probation departments throughout the state will continue to work to create programs that eliminate the role of wealth or financial status in pretrial release,” Executive Director Karen Pank said in a statement.

The Supreme Court’s opinion [affirmed the so-called Humphrey decision](#) by an appellate court in 2018, which was blocked until last August. The appellate ruling prompted changes to the bail process in courts across the state, and bail reform advocates said more changes will likely come now that the high court has weighed in.

The case centered on the [jailing of a man named Kenneth Humphrey](#), a retired shipyard worker who spent more than a year behind bars awaiting trial after he was charged with

robbing his elderly neighbor in a San Francisco residential hotel for \$5 and a bottle of cologne in 2017.

A judge initially set Humphrey's bond at \$600,000 — far more than he could afford, even with a bail bond — after using San Francisco's bail schedule, a document that assigns defendants a standard bail amount for each criminal charge and for factors such as prior convictions.

Humphrey, now 66 and living in Vallejo, was released from jail following the appellate court's ruling. The criminal case against him remains unresolved.

The next question, Ball and others say, is how the ruling will play out at the local level given the wide range of attitudes among judges in the state's 58 counties.

Raj Jayadev, co-founder of the South Bay civil-rights organization Silicon Valley De-Bug, said advocates plan to station workers in courtrooms across California to watch hearings and make sure judges are complying with the decision. While Jayadev and other advocates were broadly pleased with the ruling, he said it still gives judges too much authority to decide who can be held before trial.

Ball also noted that judges will have discretion in deciding what constitutes "affordable" bail and gauging the risk a defendant poses to the public, which could lead to more legal challenges — unless the state Legislature steps in and more clearly spells out those processes in the law.

"Judges might disagree on what an acceptable level of risk is," Ball said. "The court has said, here are the principles, but they don't have definitive rules."

California Supreme Court Rules To End Cash Bail For Some Defendants Who Cannot Afford It

Judges must consider the arrestee's ability to pay bail according to new ruling

By Evan Symon, March 27, 2021 2:31 am



California Supreme Court Justices (courts.ca.gov)

The California Supreme Court ruled Thursday that judges must consider an arrestee's ability to pay bail, and may not hold them solely because they couldn't afford bail.

In a unanimous decision, Associate Justice Mariano-Florentino Cuellar wrote on behalf of the court explaining their decision to change who or who cannot be given cash bail, noting that numerous other conditions for release adhere suspects to come back for trial and that bail unfairly burdens low-income Californians.

"The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional," said Associate Justice Cuellar on Thursday. "Where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail – and may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail.

"Other conditions of release – such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment – are often enough. They protect public and victim safety as well as assure the arrestee's appearance at trial.

"When people can obtain their release, they almost always do so. The disadvantages to remaining incarcerated pending resolution of criminal charges are immense and profound. It is one thing to decide that a person should be charged with a crime, but

quite another to determine, under our constitutional system, that the person merits detention pending trial on that charge.”

For decades, the legality and scale of cash bail have gone back and forth in California. This has been especially notable in recent years. In 2018, then-Governor Jerry Brown signed into law SB 10, which eliminated cash bail in California. However, many Californians, led by several law groups and bail bond organizations, immediately fought against the new law. They successfully halted the law from coming into effect in 2019 by putting forth a voter referendum on the issue. Known as Proposition 25, cash bail went in front of voters in November. Support for cash bail won out with 56% of the vote, effectively derailing SB 10 and bringing back the anti-cash bail movement back to square one.

Outrage, praise over court’s bail decision

Despite Prop 25 not being violated due to the court only limiting who would have to have cash bail, many bail supporters were outraged at the decision on Thursday and Friday.

“Pretty much this ruling will only have bail for those considered big risks, but it’s also the best incentive for people to go to court,” said Los Angeles lawyer Tom Peck to the Globe. “And you know, the bail industry is going to suffer due to less given out. Plus, the big one, public safety. There are going to be a lot of possible criminals awaiting trials out there. Some will continue their life, like going to work and whatnot. But the system won’t be perfect, and some people inherently dangerous will slip out without being flagged as a risk.

“It will be interesting to see the stats in a year, especially of how many of those out without bail actually show up to their trial, and how many committed crimes while out, especially violent and repeat offenders who manage to get out without bail.”

In addition, crime victims groups such as the Criminal Justice Legal Foundation (CJLF) made similar arguments.

“The money bail is there to ensure that they do come back for their trial date, and they’re incarcerated to protect the victim or the public,” said CJLF lawyer Kymberlee Stapleton. “It’s hard to tell what impact this will have on victim and public safety going forward.”

Bail companies also noted concern over the new ruling.



Assemblyman Rob Bonta. (Photo: Kevin Sanders for California Globe)

“It’s going to be a big change in the way the system works, explained American Bail Coalition Executive Director Jeff Clayton on Thursday. “The lens of due process is going to be on every bail, because prosecutors are going to have to prove, by clear and convincing evidence, a flight risk or danger if they seek to keep a lower-income suspect in custody.”

Conversely, many bail reform advocates and lawmakers against bail praised the Supreme Court’s ruling on Thursday.

“The research is clear, the negatives of cash bail fall disproportionately on Black and Brown communities without improving safety,” stated Chief Probation Officers of California Executive Director Karen Pank. “Wealth should play no role in the justice system and we will continue to fight for a pretrial system that focuses on safety, fairness and effectiveness.”

Many lawmakers who supported SB 10 in 2018, including Assemblyman and State Attorney General-nominee Rob Bonta (D-Oakland), also praised the court’s ruling, noting that while it doesn’t get rid of bail completely, it removes the unfairness of bail.

“The jail house door shouldn’t swing open or closed based on how much money you have in your pocket,” said Bonta in a statement.

The new bail limitations will not change the current temporary law that has bail set at \$0 for low-level offenses to help combat spread of the COVID-19 pandemic.



California Supreme Court ends cash bail for defendants who can't afford to pay

The state's cash bail system for pretrial release has been dealt a blow



[Ny Magee](#)
March 26, 2021

The **California Supreme Court** has dismantled the state's cash bail system for pretrial release.

On Thursday (March 25), the justices ruled that judges must, in most cases, consider a suspects' income and ability to pay when bail is set. Per [The Associated Press](#), low-income defendants must be freed while awaiting trial, unless they are deemed too dangerous to be released.

"The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional," the justices said in a unanimous decision.

Associate Justice **Mariano-Florentino Cuéllar** noted that when a judge decides that cash bail is necessary, the judge "must consider the arrestee's ability to pay the stated amount of bail — and may not effectively detain the arrestee solely because the arrestee lacked the resources to post bail."

Judges can order newly arrested defendants to be released under electronic monitoring or regular check-ins with a pretrial case manager, or suspects can be sent to shelters or undergo drug and alcohol treatment, Cuéllar said.

The court's ruling allows cash bail as long as defendants can afford it, according to the report.

"It's going to be a big change in the way the system works," American Bail Coalition Executive Director **Jeff Clayton** said. "The lens of due process is going to be on every bail, because prosecutors are going to have to prove, by clear and convincing evidence, a flight risk or danger."

In 2018, state lawmakers sought to do away with the cash bail system but bail bond companies pushed back against the measure. Voters in November rejected legislation that would have put the no-bail law into effect.

The high court's ruling "doesn't eliminate bail completely, but it eliminates the unfairness of bail," said Democratic state Sen. Robert Hertzber. The bail system in California "spun out of control and this brings it back to its core principles of what bail is supposed to be about in the first place," he added.

"The research is clear, the negatives of cash bail fall disproportionately on Black and Brown communities without improving safety," said Chief Probation Officers of California Executive Director **Karen Pank**. "Wealth should play no role in the justice system and we will continue to fight for a pretrial system that focuses on safety, fairness and effectiveness."



A sign advertises a bail bond company on August 29, 2018, in Los Angeles, California. (Photo by Mario Tama/Getty Images)

The ruling on Thursday was supported by Assemblyman **Rob Bonta**, who said... "The jail house door shouldn't swing open or closed based on how much money you have in your pocket."

The high court unanimously concluded "that our Constitution prohibits pretrial detention to combat an arrestee's risk of flight unless the court first finds, based upon clear and convincing evidence, that no condition or conditions of release can reasonably assure the arrestee's appearance in court."

The ruling was issued in the case of 66-year-old **Kenneth Humphrey** of San Francisco, who was arrested in May 2017 for stealing a \$5 bottle of cologne and spent more than eight months in jail because he couldn't post \$350,000 bail.

"The money bail is there to ensure that they do come back for their trial date, and they're incarcerated to protect the victim or the public," said attorney **Kymberlee Staple** for the Criminal Justice Legal Foundation. "It's hard to tell what impact this will have on victim and public safety going forward."

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March 29, 2021

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California top court strikes blow against cash bail

Unanimous decision hailed by progressives as a victory for economic and racial justice in the United States.



California's highest court ruled that pre-trial detention 'solely on whether an arrestee can afford bail is unconstitutional' [File: Lucy Nicholson/Reuters]

By
Brian Osgood
29 Mar 2021

San Francisco, California, United States — The top court in California last week issued a ruling that advocates for criminal justice reform in the United States are calling a “landmark victory” for efforts to confront racial and economic inequities.

In a unanimous March 25 decision, the California Supreme Court [said](#) courts cannot require individuals charged with a crime to pay cash bail as a condition of release before trial unless they consider the person’s ability to pay.

“No person should lose the right to liberty simply because that person can’t afford to post bail,” the court found. “The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional.”

The decision comes as the US is examining structural racism in its criminal

justice system, spurred in part by last year's mass protests demanding an end to racial injustice and police violence against Black people.

“This is a banner decision,” Andrea Woods, staff attorney with the American Civil Liberties Union (ACLU) Criminal Law Reform Project, told Al Jazeera. “Organisations have been fighting to bring attention to the terrible harm done by cash bail for years, and this is a validation of their efforts. It’s an enormous victory.”

Indeed, while several civil rights and criminal justice reform groups welcomed the court's decision, many tempered their enthusiasm with the caveat that scrutiny and public attention would be necessary to ensure the recommendations are implemented fairly and consistently.

“We welcome this decision, while also recognising that court rulings alone aren't enough to change a culture,” Katherine Hubbard, a senior attorney at Civil Rights Corps who worked on the case, told Al Jazeera.

By declaring that someone cannot be kept in pre-trial detention simply because they cannot afford bail, the court has shifted the burden onto judges and prosecutors, who must now provide “clear and convincing” evidence to demonstrate that pre-trial detention is necessary based on factors such as the risk of non-appearance or a threat to public safety.



Pre-trial detention cannot be used if an arrestee simply is unable to afford bail, the Supreme Court of California ruled [File: Lucy Nicholson/Reuters]

The court also stated that pre-trial detention should be used only when alternatives that keep people out of the carceral system are not possible. Instead, authorities could consider other conditions of release such as electronic monitoring, regular check-in protocols, or community housing or shelter, the court said.

Re-examining ‘tough on crime’ philosophy

The ruling marks the most recent victory for an emerging coalition of organisations and officials re-examining the “tough on crime” approach to criminal justice that has sent California’s incarcerated population soaring by 180 percent since 1970, according to a [study](#) by the Vera Institute of Justice, a

nonprofit organisation that advocates for justice reform. The study also found that in 2015, 53 percent of California's jail population were pretrial detainees, and racial disparities were startling: while six percent of Californians are Black, they made up more than 20 percent of the jail population.

Cash bail has been singled out for criticism by reformers and civil rights groups, who say the policy discriminates against poor Americans, especially those from communities of colour. Bail payments are often required to get out of jail before a trial, and are paid back after the trial proceedings as a way of ensuring attendance. But many cannot afford the bail rates, and have little choice but to wait behind bars for their trial or pay a bail bond company to cover the payment. Bond companies charge up to 10 percent of the bail rate for the service.

California is notorious for its exorbitantly high bail rates, over five times the national median, according to the ruling.



The Supreme Court of California said courts cannot require individuals charged with a crime to pay cash bail as a condition of release before trial unless they consider the person's ability to pay [File: Jeff Chiu/AP Photo]

The court's decision upheld a state court's finding that Kenneth Humphrey, a man in his 60s accused of stealing less than \$10 from a neighbour, could be released with an ankle bracelet because he was unable to afford bail, initially set at \$600,000 and then revised downward to \$350,000. If Humphrey had gone to a bail bondsman, he would have had to pay around \$35,000, regardless of the outcome of the trial.

Bail supporters accept ruling

Supporters of cash bail say it is an important tool that helps make sure people show up to their court dates.

However, the American Bail Coalition told Al Jazeera that the ruling would mean "more judicial scrutiny on cases when someone posts bail", but that "those who are able to post bail will still be allowed to do so". While previous bills would have abolished cash bail, industry groups seemed to accept the ruling, noting that while it will decrease the use of bail, it does not do away with it entirely.

Greg Totten, CEO of the California District Attorneys Association, said his group “has long believed that California’s bail system needs to be thoughtfully reformed” and “takes no issue” with the Supreme Court’s decision.

Previous legislation to abolish cash bail in California was met with bitter opposition from the state’s multibillion-dollar cash bail industry.



A bail bonds business is seen outside the Los Angeles County Men’s Jail in Los Angeles, California [File: Lucy Nicholson/Reuters]

Last week’s ruling comes four months after Californians rejected Proposition 25, a ballot initiative that would have rolled back the use of cash bail in favour of risk-assessment tools that seek to determine whether or not an individual poses a threat to public safety.

Some progressive groups joined an unlikely alliance with law enforcement and money bail supporters to oppose the bill, citing concerns that risk-assessment tools contain biases that could replicate the very inequities reformers hoped to excise from the system.

“In some ways, I see this as more ambitious than previous legislation that would have banned cash bail because it instructs judges to explore alternatives to incarceration wherever possible,” California State Senator Scott Wiener told Al Jazeera about the Supreme Court’s decision.

Wiener co-authored SB 10, a bill that would have abolished cash bail. The bill passed, but the cash bail industry quickly worked to undermine it, and the law was ultimately undone when Proposition 25 failed to pass in the 2020 election. “For so long we’ve operated under the belief that we can solve our problems by throwing people in jail, and it just isn’t true,” said Wiener. “This is a recognition of that.”

Critics have long said the practice infringes on the rights of those who cannot afford to make bail payments; around half a million individuals who have not been convicted of a crime are held in jails across the US because they cannot pay their bail, according to the Prison Policy Initiative, a think-tank that focuses on criminal justice and mass incarceration.

While the court’s ruling does not abolish cash bail, as SB 10 and Prop 25 attempted to do, many criminal justice advocates say it is groundbreaking, nonetheless.

“I know what it’s like to feel sick with worry that you won’t be able to put together enough money to post bail for a loved one,” said Dolores Canales, an organiser with The Bail Project, which helps provide bail for those who cannot afford it.

“This is a huge deal and I welcome it,” she said. “But a lot of work remains to be done, and we have to stay vigilant.”



GET OUT OF JAIL FREE

Senate bill targets monetary bonds for some offenses

Heidi Beedle Mar 31, 2021



Critics of monetary bonding say it disproportionately impacts poorer populations.
Casey Bradley Gent

Sen. Pete Lee is still working to reform Colorado's criminal justice system. Hoping to make COVID-driven emergency measures adopted by

sheriffs across Colorado permanent, he is sponsoring Senate Bill 21-062, "Jail Population Management Tools."

The bill would "prohibit a peace officer from arresting a person based solely on the alleged commission of a traffic offense; petty offense; municipal offense; misdemeanor offense; a class 4, 5, or 6 felony; or a level 3 or 4 drug felony" with certain exceptions. The bill would also eliminate monetary bond for those offenses, with certain exceptions, a move cheered by criminal justice reform activists and condemned by the American Bail Coalition.

"What the bill fundamentally does is adopt some of the processes and procedures that sheriffs around the state utilized at the recommendation of [the Centers for Disease Control and Prevention] to reduce the number of people in those congregate care facilities in reaction to COVID," said Lee, D-SD11, in a March 23 town hall. "They did some very smart measures which reduced jail populations across Colorado by almost 50 percent.

"They did it by a couple of methods," Lee explained. "One, instead of having officers issue warrants and arrest people for low-level offenses, they required them to issue them a summons rather than arresting people and putting them in jail and exposing them to COVID. They would issue them a summons and tell them to come to court on a [future] date. By not bringing those people in, they reduced the population.

The other thing they did was work with the prosecutors and judges to increase the amount of personal recognizance [PR] bonds. When people are brought into jail they have an opportunity to bond out. They can bond out by paying a money bond or they can sign an affidavit saying they'll come back for court. What happens when you put up money bond is that poor people stay in jail and rich people get out of jail. Poor people don't have the money to post bond. What the courts did was increase the availability of PR bonds to enable more people to get out of jail, and that reduced jail populations and the exposure to COVID."

The cash bail issue has been a major focus of criminal justice reform advocates, who see it as contributing to inequities in the system. “The majority of people in our jails across the state of Colorado are innocent, meaning they have not been prosecuted or found guilty of any crime,” says Denise Maes, public policy director for the American Civil Liberties Union of Colorado. “They are there simply because they cannot afford the money bond to get out. That is one reason why this bill is really important, it does honor the principle of ‘You are innocent until proven guilty.’ Jails and our over-reliance on jails has not made us any safer. One of the things we can all agree on is we need to find a different way, and that’s what this bill does.”

Sen. Pete Lee has long advocated for criminal justice reform.

Maes notes that cash bail effectively creates two different criminal justice systems based on socioeconomic status. “Right now we have a system where you can have two individuals who have committed the exact same crime, and one is able to pay the ransom — the money bond, the toll — to get out of that jail and the other cannot,” she says. “Where one can continue their life, going home, going to family, going to work, picking up their kids, doing whatever they do on a regular basis, they’re able to do that.

The individual who could not afford to pay runs the risk of losing their job, creating a lot of family disruption, may be unable to pick up their kids from school, may be unable to attend doctors’ appointments. It really does create a very inequitable system among people who can pay and people who can’t. Quite honestly, because those two individuals committed the exact same crime, neither one probably presents any risk to community, because one could get out, the other can’t.”

Maes notes that socioeconomic disparities also extend along racial lines. “We know full well that anything in the criminal legal system does have a

disproportionate impact on people of color,” she says. “Communities of color are typically over-policed and therefore subject to being arrested more often. Once they get into the criminal legal system it becomes more difficult to get out of it, whether it’s because you can’t pay the money bond or whether you have been overcharged, or whatever the case may be.”

Colorado is not the only state to consider legislative bail reform — Alaska, New Jersey, New York and Utah have all passed legislation in recent years to regulate and restrict the use of cash bail. Such reform efforts have raised concerns in the American Bail Coalition, a trade association of surety insurance companies that underwrite criminal bail bondsmen.

“We think it’s an impairment of judicial discretion,” says Jeffrey Clayton, executive director of the American Bail Coalition. “I’ve worked on this issue in Colorado since 2008. The way bail has worked in Colorado is judges have been left to decide bail in their cases without the Legislature forcing their will on judges. Whether that’s when Republicans were in power and people would say, ‘We want to increase bails or force bails to be set,’ or when Democrats are in charge and want to say somebody shouldn’t have to post bail.”

Clayton says basing bond decisions on classification — whether it is a felony or a misdemeanor — is not the most important factor to consider. “It’s a bad way to draw the line,” he says. “Obviously, just because you’re charged by a prosecutor doesn’t mean you’re guilty, but what does matter is prior criminal history and prior failures to appear. This bill would say, ‘If you’re in the category of felony 5 and you have a record a mile long and you never appear in court, you’re still going to get a free bail.’ Whereas the first-timer, who has no criminal history whatsoever, who is charged with an F3, because they’re outside the limit, is going to be required to post bail. We argue that



Sen. Pete Lee has long advocated for criminal justice reform.

Jeff Bernhard

that's a bad way to discriminate against criminal defendants, for the purposes of bail."

Under the bill, a judge would have discretion over bond. The bill states, "A court shall not impose a monetary condition of release unless the court finds on the record that there is a substantial risk that the defendant will flee prosecution or threaten the safety of another person and no other condition of release can reasonably mitigate the risk."

Clayton also says that bail reform laws in other states have been rolled back. New York amended a bail reform measure after the New York Police Department blamed the legislation for a spike in crime, although public defenders said police were manipulating the numbers to fit their agenda. Utah legislators repealed their bail reform law over concerns about implementation of the law, but are considering future reform bills.

Lee is undeterred. "My task is more focused on passing legislation than worrying about repeal of legislation," he said. "I think there is a lot of good evidence to indicate cash bail systems have some significant drawbacks to them. Most significant of which is that they've been held to be unconstitutional as a denial of equal protection of the laws in Harris County, Texas, because they discriminate in favor of wealthy people and discriminate against poor people. If you have money, you can get out of jail. If you don't have money, you cannot get out of jail. It's one of those implicit bias situations where it disproportionately adversely affects people of color, because they are arrested more often, jailed more often, and required to post cash bail more often. I've got a bill to increase the utilization of PR bonds. I think there's still a place for cash bail under certain circumstances."

Maes notes that the American Bail Coalition — which represents an approximately \$2.4 billion industry — has a vested interest in opposing this type of legislation. "The American Bail Association's arguments against Senate Bill 62 — which is a bill aimed at safely reducing arrests, cash bail, and jail populations — it's simply inaccurate fear-mongering aimed at doing

one thing, and one thing only: saving a dying, cruel industry that capitalizes on poverty and ignores the presumption of innocence,” she says. “In this era ... the United States and the Philippines are the only two countries with a cash bail system dominated by commercial bonds people. That’s all this is, they want to save their industry.”



Heidi Beedle

News Reporter

Heidi Beedle is a former soldier, educator, activist, and animal welfare worker. She received a Bachelor's in English from UCCS. She has worked as a freelance writer covering LGBTQ issues, nuclear disasters, cattle mutilations, and social movements.



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State Chief Justices and Court Administrators Continue Harmful Advocacy of Justice-By-Algorithm Criminal Justice Policies Despite Fundamental Problems and Lack of Legal Recourse

By Jeffrey J. Clayton

(First of Two Parts)

Pushback against the use of computer-based risk predicting algorithms in the criminal justice system is gaining momentum despite the fact that these tools are still in use at every stage of the criminal justice process.¹

Implemented on a cradle-to-grave basis, these algorithms tell the police where to go and determine who gets bail, while setting conditions of release, sentencing, probation and parole. In juvenile court, special risk assessments attempt to predict the future behavior of young offenders.

As UC Berkeley law professor Rebecca Wexler put it, “Predictive policing technologies identify ‘hot spot’ neighborhoods. Social media analytics flag at-risk individuals. Forensic scientists use software programs to analyze crime scene evidence, including DNA, fingerprints, ballistics, and face matches. And judges and parole boards rely on risk assessment instruments, which purport to predict an individual’s future behavior, to decide who will make bail or parole and even what sentence to impose.”²

The AI Now Institute, a research organization focused on the social implications of artificial intelligence, cogently summarized to the Pennsylvania Supreme Court on December 16, 2019, its latest assessment as to the success of the evidence-based risk assessment era: “Risk assessment tools offer the promise of improving individual assessments for use within the criminal justice system, including for bail setting purposes, but few if any have delivered on that promise. Rather, research has shown copious amounts of evidence of racial biases endemic to risk assessment.”³

More recently, in a multi-year academic study of the Colorado Pretrial Risk Assessment Tool (CPAT) released in July 2020, University of Northern Colorado researchers found some surprising results as to the accuracy of its predictions.⁴ They discovered that CPAT was generally wrong 35 percent of the time in predicting the risk of failing to appear in court or committing a new crime while on bail.⁵ When it came to predicting a new violent crime or domestic violence incident, flipping a coin performed equally as well.⁶

Although a dubious claim could be made that CPAT had achieved predictive parity, it merely meant that

it was equally poor at predicting for both white and non-white defendants. Nonetheless, it failed the error-rate balance test, insofar as it over-predicted the risk of failing to appear or committing a new crime among non-white defendants, as compared to their white counterparts.

Colorado Newsline reported that the University of Northern Colorado study “found that the most widely used risk assessment tool in Colorado, known as the Colorado Pretrial Assessment Tool, or CPAT, scored Black people higher than white people even though their odds of missing a court date or committing a new offense were nearly the same.”⁷ One commentator concluded that, “The risk assessment tool [CPAT] is like polishing racism.”⁸

Despite the growing academic and political cavalry charge against the algorithms, there are, however, some very significant groups that are not yet ready for an end to the risk assessment era. Rather, they are actually pushing with tremendous effort to *accelerate* the embedding of pretrial risk assessments in the criminal justice process throughout the United States. The Conference of Chief Justices (“CCJ”) is by far the most influential and it continues to push risk assessments both for bail and sentencing. In fact, the Wisconsin Supreme Court, in a due process challenge to the COMPAS⁹ risk assessment tool a few years back, began its opinion by noting the support of the Conference of Chief Justices and the American Bar Association in support of evidence-based risk assessment in the criminal justice system.¹⁰ The Conference of Chief Justices adopted a resolution¹¹ in support of pretrial risk assessment tools and also supported the resolution and policy of the Conference of State Court Administrators¹² (“COSCA”), a national conference of the highest-ranking court administrators among the states and U.S. territories.

The rationale for adopting a position in favor of pretrial risk assessment tools was made clear in the CCJ’s resolution. “The Conference of Chief Justices commends and endorses the Policy Paper on Evidence-Based Pretrial Release and joins with the Conference of State Court Administrators to urge that court leaders promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to

the greatest degree consistent with evidence based assessment of flight risk and threat to public safety and to victims of crimes.”¹³ Thus, conditions of release and the presumption of non-financial release are to be “consistent” with the results of a risk assessment, which means they must be driven by its results. Said COSCA: “The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen.”¹⁴ In fact, the CCJ also has a resolution on its website supporting federal efforts to promote pretrial risk assessment.

The adoption of the resolutions by the CCJ and COSCA was part of a fundamental change that its members decided and resolved was to be led by them, not those who traditionally engage in substantive policy-making. The CCJ pushed “court leaders,” presumably at the state and local level, to lead the push toward nationwide adoption of risk assessment algorithms. COSCA encouraged court officials to “take the message to other groups” and to work with all players in the criminal justice system to design policies that were “risk-based release decisions of those arrested.” So, this was not merely endorsing an outcome — it was direct advocacy in all public and private forums to embed these algorithms throughout the criminal justice system.

With the judiciary forcing the embedding of risk assessments throughout the process, practitioners must now be prepared to deal with the results of this move. The fact is that a given assessment might discriminate against clients due solely to demographic or immutable characteristics. Sadly, there are myriad legal barriers to vindicating the rights of one’s client to be free from such discrimination. This is driven primarily by science. It has heretofore been established that a computer program cannot be mentally culpable in the traditional sense under the doctrine of anti-discrimination law: “Existing legal doctrine provides little guidance on algorithmic decision-making because the typical discrimination case focuses on the human component of the decision, which often remains opaque. ... When algorithms make decisions, opaque human behavior is replaced by a set of rules constructed from data.”¹⁵

Because an algorithm cannot form

an intent, who exactly would constitute definitive and culpable discriminatory minds? Would it be the programmers? Data analysts? Perhaps the public officials who decided to adopt the algorithm in the first place?

The other problem with how things developed is that the *intended results were precisely the opposite of what actually occurred*. Public officials were promised that these tools would reduce racial disparities, save jail and prison costs, and better protect public safety by flagging non-violent individuals for release, while keeping those who are violent in jail.

Perhaps at some point reckless deliberate indifference comes into play. However, getting there would be a reach because it is nearly impossible for a single defendant to prove the case of discrimination when, as in the case of *State v. Loomis*, a judge could simply say, “I would have done the same thing anyway.” An even more egregious possibility would be if a judge actually *did* go ahead and “do the same thing anyway” on remand after a successful appeal.

Even if lawyers were to challenge risk assessment algorithm results as unscientific and win (which would be difficult in a pretrial context where the rules of evidence are typically relaxed¹⁶) it would be applied to the next defendant, the one after that and so on. Eventually, it might turn out to be useful to one or more of them. Once a defendant gets labeled as lower risk than his or her lawyer might have expected, and a prosecutor subsequently seeks an increase in bail or increase in conditions, the lawyer will be in a position to argue the soundness of the science underlying the tool. Come the time when a defendant is labeled high risk with a recommendation to detain, this individual’s lawyer will be in a position to make the argument for what it is: junk science.

We saw this scenario play out in a recent Colorado survey report of judges, prosecutors, defense counsel and pretrial services workers, in which one judge expressed ongoing frustration: “So the [defense attorneys] are always arguing for bond, and the [prosecutors] are all arguing for no bond.... And if the CPAT is in their favor they argue it, and if it’s not in their favor they disregard it. And not every single argument, but... often, and it’s completely aggravating,

JUSTICE-BY-ALGORITHM

continued on page 5

JUSTICE-BY-ALGORITHM

continued from page 4

because...well, I'm not getting any help from the litigants.¹⁷⁴

Practically speaking, in a first appearance courtroom, staffed by the same prosecutor and public defender, a judge might hear an argument from a counsel's table regarding the quality of the science...and moments later hear strong words that the science was complete junk from the very same counsel.

As to finding grounds to challenge risk assessments, *State v. Loomis* stands as the seminal case on the issue. A criminal defendant argued that the COMPAS risk tool "violates a defendant's right to due process, either because the proprietary nature of COMPAS prevents defendants from challenging the COMPAS assessment's scientific validity, or because COMPAS assessments take gender into account."¹⁸

In summarizing its holding on the matter, the Wisconsin Supreme Court said: "Ultimately, we conclude that if used properly, observing the limitations and cautions set forth herein, a circuit court's consideration of a COMPAS risk assessment at sentencing does not violate a defendant's right to due process."¹⁹ The COMPAS tool itself was also upheld in part because the court maintained that it may not be the "determinative factor" as to the outcome. Despite the fact that without the warning the tool would have run afoul of the due process clause, no other state statute or rule requires such warnings.

Proper use (including "limitations and cautions") was ultimately defined by the Wisconsin Supreme Court as the need for a version of a due process warning that instructs judges as to the inherent flaws in risk assessment tools, as follows:

Specifically, any PSI containing a COMPAS risk assessment must inform the sentencing court about the following cautions regarding a COMPAS risk assessment's accuracy:

- (1) the proprietary nature of COMPAS has been invoked to prevent disclosure of information relating to how factors are weighed or how risk scores are to be determined;
- (2) risk assessment compares defendants to a national sample, but no cross-validation study for a Wisconsin population has yet been completed;
- (3) some studies of COMPAS risk assessment scores have raised questions about whether they disproportionately classify minority offenders as having a higher risk of recidivism; and,
- (4) risk assessment tools must be constantly monitored and re-normed for accuracy due to changing populations and subpopulations.

Providing information to sentencing courts on the limitations and cautions attendant with the use of COMPAS risk assessments will enable courts to better assess the accuracy of the assessment and the appropriate weight to be given to the risk score.²⁰

The court might have simply said,

"this tool does not scientifically predict human behavior with any degree of certainty and as someone relying on the tool you may want to be aware of that." ■

The remainder of the article will be published in the May issue.

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a

B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

1 Rebecca Wexler, *Life, Liberty and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 Stanford L. Rev. 1343, 1346 (2018) (citation omitted).

2 *Id.* (citations omitted).

3 Brief for Amicus Curiae the AI Now Institute in Support of Petitioners, *The Philadelphia Community Bail Fund, et al., Petitioners v. The Magistrates of the First Judicial District of the Commonwealth of Pennsylvania, Respondents*, No. 21 EM 2009 (P.A. 2009).

4 Victoria A. Terranova & Kyle C. Ward, Colorado Pretrial Assessment Tool Validation Study Final Report, 57-58 (July, 2020).

5 *Id.* at 46.

6 *Id.* at 57 (tool does not predict better than chance for new violent, domestic violence, or other serious new arrest).

7 John Herrick, *Bias Against Black People Found in Colorado Bail Reform Tool*, Colorado Newsline, August 14, 2020, <https://coloradoneusline.com/2020/08/14/bias-against-black-people-found-in-colorado-bail-reform-tool/>

8 *Id.*

9 The COMPAS risk assessment was used for several years to assess pretrial risk in Los Angeles County

10 *State v. Loomis*, 2016 WI 68, ¶ 1, 881 N.W.2d 749, 752.

11 CONFERENCE OF CHIEF JUSTICES, Resolution 3, Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release, Adopted as proposed by the CCJ/COSCA Criminal Justice Committee at the Conference of Chief Justices 2013 Midyear Meeting on January 30, 2013, https://ccj.ncsc.org/_data/assets/pdf_file/0020/23654/01302013-pretrial-release-endorsing-cosca-paper-evidencebased-pre-trial-release.pdf

12 Arthur W. Pepin, 2012-2012 Policy Paper, Evidence-Based Pretrial Release, Conference of State Court Administrators, https://www.ncsc.org/_data/assets/pdf_file/0015/23802/Evidence-Based-Pre-Trial-Release-Final.pdf

13 *Supra* note 11.

14 *Supra* note 12, at 7.

15 Talia B. Gillis & Jann L. Spiess, *Big Data and Discrimination*, 86 U. Chicago L. Rev. 459, 462 (2019).

16 For example, see Federal Rules of Evidence, Rule 1101(d)(3) (federal rules of evidence do not apply to "considering whether to release on bail or otherwise").

17 *Supra* note 4, at 31.

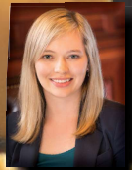
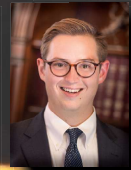
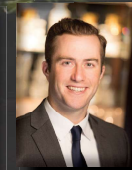
18 *Supra* note 10, at ¶ 7, 753.

19 *Supra* note 10, at ¶ 8, 753.

20 *Supra* note 10, at ¶ 66, 764.

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April 7, 2021

Bail reform debate continues

By Makayla Hancock News-Press NOW



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Bail reform appears to be at the center of debate again, with the most recent move to end bail in Illinois.

Different bail reform measures have taken place over the past few years, including the money bail reform act of 2019 and Missouri's Supreme Court ruling in 2020 that judges have to consider non-monetary conditions for pretrial release.

The latest reform in Illinois ends cash bail under the Pretrial Fairness Act, which states access to wealth will not play a role in release or detention decisions, according to the endmoneybond.org.

"I think really the picture that we're looking at in Illinois, is where is this going to land? And I don't think we know, it's not going into effect until January 1, 2023. But the real open ended question is who's staying in jail pending trial? And who's not?" Jeff Clayton, the executive director of the American Bail Coalition, said.

Clayton says Illinois is not the first state to eliminate bail, pointing at other states that made significant changes to their constitution.

"(...) look to New Jersey and to a certain extent, New Mexico, both of which had to change their state constitutions to deny the right to bail and to sort of enumerate the charges were, we're gonna leave somebody in jail pending trial," Clayton said. "As I see it, that's the major open-ended question in Illinois, and what the Illinois Supreme Court

cautioned them before they did this, which is you need to figure that out, you need to think about what the ultimate system would look like.”

Local law enforcement spoke in past interviews about bail reform and how there has been an increase in defendants’ failure to appear.

“You’re not going to get preventative detention; this legislature is not going to fully fund a robust system of preventative detention of repeat criminals. It is just not going to happen. So that is why to law enforcement, it’s false hope that there’s going to be some alternate system that’s going to work better,” Clayton said.

Circuit Judge Keith Marquart, with the Buchanan County Courthouse, discusses the bail reform and how it affects defendants and the public.

“There’s a balance that has to be struck between the interests of the accused, the interests of society, and the presumption of innocence. So we start with the presumption of innocence, that a person is in custody, we should release them unless there is a reason not to,” Marquart said. “The reasons not to include they have previous record, they have a record of not appearing before, they have record, which includes resisting arrest, they’re charged with a serious offense involving danger to the community or danger to individuals, or their violent offenders.”

Marquart breaks down other forms of bail that are not of monetary conditions.

“You’re not to use drugs; you’re not to drive, you have to submit to drug testing, you have to wear a drug monitor or an alcohol monitor, you have to wear GPS devices,” Marquart said.

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Marquart said those expenses would cost more than the average bond amount when looking at house arrest and GPS monitoring.

Currently, Marquart says he has not seen an increase in defendants failing to appear since the ruling last year but stresses that if an individual does not show, they can likely have their bail revoked and held without bail until their case is over.

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Do our Dem state reps endorse "Get out of Jail free cards?"

**Opinion by The
American Bail
Association**

As crime continues to spike in Colorado's urban centers, bail reformers are at it again, pushing Senate Bill 21-062. This new proposed legislation attempts to further erode criminal accountability by arguing that we need to further loosen up the criminal justice system, so that fewer defendants will get arrested, and more will receive a get out of jail free card, known as a "personal recognizance bond."

This is a dramatic move that is opposed by Colorado Chiefs of Police, numerous Sheriffs, and many members of the community.

Recent public testimony against the bill included numerous angry business owners who are attempting to operate on Boulder's Pearl Street Mall, where they are subjected to continuing crimes against their businesses, which sadly includes subjecting their employees to physical violence

from repeat offenders.

Originally, the ACLU's legislation would have also prohibited the arrest by police of Felony 4-6 and all misdemeanor crimes in Colorado.

Of course, to get groups to "neutral," which doesn't mean "support," it had to make a litany of concessions, as to these arrest powers.

These included some serious exceptions including:

- (1) Victim's Right Act crimes, which are of the most serious crimes to human victims in Colorado;
- (2) Sexual Offenses including failure to register;
- (3) repeat DUI crimes including felony DUI crimes; and
- (4) "The offense includes an element of illegal possession or use of a firearm."

So, Police Officers, under the ACLU's bill, have unfettered authority to arrest persons in these categories.

But when it comes to the presumption of a personal recognizance

This new proposed legislation attempts to further erode criminal accountability by arguing that we need to further loosen up the criminal justice system, so that fewer defendants will get arrested, and more will receive a get out of jail free card, known as a "personal recognizance bond."

bond in all F-4, F-5, F-6 and misdemeanors, there are no such exceptions.

While there are new exceptions to the personal recognizance presumption, they are quite narrow and require prosecutors to put on evidence at a bail mini-trial.

The end result is that officers are going to arrest defendants on felony Victim Rights Act

Crimes, Sexual Offenses, Repeat DUI and Firearms Crimes that are going to get out of jail on a personal recognizance bond, as a direct result of this presumption.

How many, we'll never know, but it will be a significant amount because, as the ACLU testified at the hearing, the goal is to de-populate the jails permanently, and make things look the COVID-19 release policy where the jail populations dropped 10-50%, depending on the jurisdiction.

Where is the Governor on this, you may ask?

We don't know.

The ACLU testified at the hearing that the Colorado Department of Public Safety (a cabinet department) supported the bill, but the sponsor of the bill noted that the Colorado Department of Public Safety was "neutral" on the bill.

So, which is it?

We do know that this bill was not the product of careful deliberations of the Colorado Commission on Criminal and Juvenile

Justice (CCJJ), chaired by the Administration's Public Safety Director Stan Hilkey.

Similarly, the bill does not enjoy the support of CCJJ, which nearly all important criminal justice legislation that has become law over the last 15 years has.

At the end of the day, this deceptive bill, known as "jail population management tools" is legislative line drawing at expense of judicial discretion.

As we learned in New York and many other states, this line drawing is dangerous and increases defendants thumbing their nose at the system and skipping court, delaying justice.

Amazingly, the bill that was actually endorsed by CCJJ for the past two years that would have provided funding to local governments, is nowhere to be seen.

Note: See the Letter To The Publisher on Page 7 from all the sheriffs and police chiefs in Judicial District 5.

April 11, 2021

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By Makayla Hancock News-Press NOW



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COLORADO

Colorado General Assembly Must Stop Interfering With State's Judiciary

JEFFREY CLAYTON
AMERICAN BAIL COALITION

It seems the Colorado General Assembly cannot resist tinkering with judicial discretion in criminal cases. Senate Bill 62 is the latest assault on the state's judges, forcing them by statute to discriminate against criminal defendants for purposes of bail, based solely on the charge lodged by the prosecution.

Judicial discretion is central to the criminal justice system. Unfortunately, Senate Bill 62 would create presumptive free bail for those charged with Class 4, 5 and 6 felonies and all misdemeanor crimes in Colorado. As drafted, judges would still have limited discretion to impose bail on defendants in this category, but these exceptions have different legal standards than for those charged with crimes outside of it. Those charged with Class 1, 2 or 3 felonies would not be eligible for free bail but would be required to

have a judge set bail for them.

Because Colorado is a right-to-bail state, the very premise of Senate Bill 62 challenges that guarantee to its citizens, individuals not in those classes and the victims of crime. As specified in the state Constitution, all persons shall be bailable by sufficient sureties except in capital cases, where the proof is evident or presumption is great. Sufficient sureties is a key component of the law as it means the people, represented by district attorneys, have a right to argue the bond amount imposed by a judge is inadequate. That is, a free bail or low bail cannot reasonably be considered sufficient sureties in some cases. In fact, the very constitutionality of Senate Bill 62 is highly in doubt because it restricts judicial discretion to impose bail that meets that legal definition.

The creation of two distinct groups under Senate Bill 62 may violate the Equal Protection Clause. Members of one group are conferred the benefit of a

personal recognizance bond (or at least a very high change of one) by virtue of the category of crimes they fall under. Members of the other group are denied those same rights because they are in the "wrong" group. What is the basis for that distinction? According to nearly eight hours of Senate Judiciary Committee testimony on this bill, the answer is there is no actual basis for drawing a line between the two groups other than some legislators think a particular list of crimes is really, really serious. But what about these other crimes over there? We guess they're not so bad. No data was presented to the Senate Judiciary Committee that informed as to whether persons in any of these categories of crimes were more likely to commit a new crime or fail to appear in court than another.

It's important to point out that when trying to predict pretrial misconduct, the crime a defendant is charged with is nearly a non-factor — a fact borne out in a study of the Washington, D.C., pretrial system conducted by the Pretrial Services Agency for the District of Columbia in 2013. The study found that variables related to the charge only comprised 5% of the predictiveness of the instrument for purposes of a failure to appear in court, and only 8% as to the risk of a new crime. Instead, prior criminal history and record of failing to appear in court were the key factors in calculating the probability of a defendant violating the terms of their release.

Multiple studies for a generation have concluded that the charge alone simply does not predict pretrial misconduct. Some reports have even found that in some cases, the more serious the charge, the less likely a person will be to fail to appear in court or commit a new crime, particularly in juvenile matters.

In a 2019 letter to then-Chief Justice Charles Daniels of the New Mexico Supreme Court, the Social Research at the University of New Mexico determined that

"the proposition that a defendant's current charge alone is predictive of his or her subsequent involvement in dangerous crimes is not supported in extant research."

Two simple examples drive this point home. Person A is charged in Colorado with a non-violent, Class 3 felony. He has no prior record, has never been arrested, is an upstanding lifetime resident of the state and has never failed to appear in court. By statute, in order to be released, he would have to post bail, which if he failed to do, would serve to detain him in jail. On the other hand, person B is charged with a violent Class 4 felony. He has four prior failures to appear, a criminal record a mile long and no ties to the community. This individual would start off with a presumptive personal recognizance bond.

Senate Bill 62 is written so poorly, it is unclear if heightened scrutiny under the Equal Protection Clause would apply in the context of these examples, which if it does, would absolutely deal a fatal blow to the measure. However, even if it did not apply, this scheme to statutorily force judges to discriminate against defendants for purposes of bail, based solely on the criminal charge, completely lacks any rational basis.

Thus, any defendant not included in the category of those who receive a presumptive personal recognizance bail, would have reason to contest their standing. Their challenge would be easily won and the statute invalidated on equal protection grounds.

Judicial discretion is the touchstone of bail. The inherent power of the local judges to assess cases on an individual basis is what the constitution was designed to address in the handling of criminal actions. The legislature got it right in 2013 by eliminating such arbitrary discriminations, and there is no reason to go back. •

— Jeffrey J. Clayton is the Executive Director of the American Bail Coalition.



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April 20, 2021

Montana adopts first record-keeping rules for bail bondsmen

2021 CQDPRPT 0286 • By Zoe Sagalow, CQ Roll Call

CQ Roll Call Washington Data Privacy Briefing • April 20, 2021

(April 20, 2021) - Insurance producers selling bail bonds, known commonly as bail bondsmen, in Montana must follow record-keeping and other requirements under rules adopted by the state's regulator.

The rules, which took effect April 16, require that...

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Montana adopts first record-keeping rules for bail bond insurers

(April 20, 2021) - Insurance producers selling bail bonds, known commonly as bail bondsmen, in Montana must follow record-keeping and other requirements under rules adopted by the state's regulator.

The rules, which took effect April 16, require that agreements with defendants be in writing, signed by parties involved, and include information such as the amount of bail and amount and type of collateral.

"These rules are necessary because some took advantage of the inadequate regulatory framework — hurting consumers and the industry," Commissioner Troy Downing said in a statement. "Inadequate record keeping leaves consumers at risk of losing their collateral. ... These rules are a step in the right direction to protect consumers from bad actors."

When a judge sets bail, the defendant can arrange for a bond instead of paying the full bail amount. Bond agents agree with courts to pay the full amount if the defendant doesn't appear for trial. The bond fees in Montana are typically 10 to 12 percent of the bail amount, according to BailBonds Network, a website that helps consumers find bondsmen. This can help people financially unable to post full bail, though some still consider the bail system discriminatory against low-income defendants.

Spokesperson Sam Loveridge for Downing's office said the rules went into effect because of a rise in complaints from consumers and the industry.

Defendants regularly complained they didn't receive copies of applications, collateral descriptions or payment arrangements, the office wrote in response to a comment on the proposed rules. In addition to formal complaints from consumers, the office "is aware of incidents that indicate the need for regulation of surety bail insurance producers and has received requests for regulation from members of the industry," it said.

The American Bail Coalition, an insurance trade group, is "fairly comfortable" with the rules and see them as consistent with other states, said Executive Director Jeffrey J. Clayton. The association is a trade group with members that are bail bond insurers.

The rule will ensure documentation occurs that collateral was received and when it was released, he said.

"The consumer needs to be informed," Clayton said in an interview. "There needs to be full disclosure and accounting of what's going on. And we think that's a good thing and was necessary in Montana."

Andrea Woods, staff attorney with the American Civil Liberties Union's Criminal Law Reform Project, described the commercial bail industry as "inherently predatory" and said it ultimately needs to be abolished.

"Individuals only become a bail agent's customers under the duress of incarceration from unaffordable money bail requirements," Woods told CQ Roll Call in a statement. "Stricter regulation of this industry is a step in the right direction, but more should be done to ensure the worst abuses — including extortionate and violent conduct — are prevented."

By Zoe Sagalow, CQ Roll Call

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NEWS > [DENVER7 360](#)

Colorado jail reform bill would significantly change arrests and bail bonds, but faces major pushback



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Photo by: The Associated Press/Denver7

This image provided by the Shenandoah Valley Juvenile Center shows part of the interior of the building in Staunton, Va. (Shenandoah Valley Juvenile Center via AP)



By: [Meghan Lopez](#)

Posted at 4:15 PM, Apr 23, 2021 and last updated 3:15 PM, Apr 23, 2021

DENVER — Colorado lawmakers are considering a bill that would significantly reform pre-trial arrests and confinement in the state.

[Senate Bill 62](#) promises two major changes; first, the bill would prohibit peace officers from arresting some who commits low-level crimes. Those crimes include:

- A traffic offense
- A petty offense
- A municipal offense
- A misdemeanor
- A class 4, 5 or 6 felony
- A level 3 or 4 drug felony

Instead of arresting the suspect, the officer would instead issue a court summons.

The bill allows for exceptions that would allow officers to arrest someone who cannot verify their identity, who is considered a threat to community safety, who shows a clear unwillingness to stop their criminal behavior, or who has committed a victims' rights crime, among other things.

The second portion of the bill restricts the types of bonds courts can offer to these defendants. Instead of issuing a surety (a.k.a. cash) bond, courts would be required to issue personal recognizance (PR) bonds for people suspected of committing these offenses.

By doing this, more people would be able to be released from jail while awaiting their trial date.

The bill does allow for some exemptions to allow courts to use cash bonds if the defendant poses a flight risk or a safety risk to the community.

Further, the bill allows defendants to fail to appear for their court appearances up to three times before they are issued a cash bond.

Finally, the bill allows sheriff's departments to actively manage their jail populations to protect community safety while limiting the number of people in custody.

Time for reform

Supporters of the jail reform bill believe the changes are necessary and long overdue.

“We should reserve our jails for people who create a risk to people in the community,” said Sen. Pete Lee, D-Colorado Springs, the bill’s primary sponsor.

Over the past year of the pandemic, jails have already been working to reduce their populations in order to allow for better social distancing. Part of the changes included early release for some prisoners and issuing court summons and more PR bonds.

Lee would like to see some of those changes codified into law so that the practices will continue after the COVID pandemic ends.

“We are addicted to incarceration. We incarcerate more people in Colorado than any other country in the world per capita,” he said. “We don’t want people who have committed low-level offenses, petty offenses, municipal offenses brought into jail.”

Lee has been working on criminal justice reform bills for years, including several during the current legislative session. He doesn’t believe the current incarceration system is working well and is rather being used to house people who need help.

“Putting people in jail who are mentally ill or addicted to drugs doesn’t solve mental illness or drug abuse problems,” Lee said. “What we’re trying to do is move our system toward a system that effectively treats rather than incarcerates.”

A different version of this bill was introduced last year and had bipartisan support, but failed to gain any traction once the pandemic hit. This time around, the bill has strong Republican opposition.

Meanwhile, the American Civil Liberties Union of Colorado believes this bill will protect the key tenet of the American judicial system by providing more equal access to bail.

“It really preserves and keeps intact the principle that one is innocent until proven guilty,” said Denise Maes, the public policy director for the ACLU of Colorado. “People do need to understand that there are a lot of people in our jails who are innocent, pure and simple.”

Maes says the current system favors people who are affluent enough to pay bails to be released from jail while placing a disproportionate burden on low-income defendants.

“The only reason why (defendants) are there is because they don’t have the money, the toll, to pay the ransom to get out,” she said.

Beyond having to pay for bail, defendants’ lives, jobs and families may also be affected by their incarceration, making it even more difficult to pay for a cash bond.

[A report released by the ACLU](#) found that the state experienced significant savings by incarcerating fewer people during the pandemic.

According to the report, the state’s jail populations dropped by 46% between March and May of 2020, equating to roughly 6,000 fewer prisoners.

On average, the state’s jails were kept at 47% capacity during the pandemic compared to the 81% capacity during normal times.

If the decreased levels were sustained, the ACLU estimated the state would see a savings of \$210 million per year.

"There's no question that this particular piece of legislation is bold, it's positive and it's real pre-trial reform. And it's long overdue," Maes said.

The opposition to reform

[Opponents of the bill](#) believe it could set a dangerous precedent for the state that perpetuates crime.

"It doesn't do anything for community safety. As a matter of fact, it makes communities less safe," said Sen. John Cooke, R-Greeley, the former sheriff of Weld County turned lawmaker. "It's pro-criminal. I wouldn't say it's anti-victim, but in a way it is."

Cooke is particularly worried about the class 4 and 5 felonies that would require a court summons instead of an arrest under the bill's current language, and says those classes of charges cover a wide range of crimes.

Class 4 felonies include identity theft, criminal trespassing, car theft, criminal extortion, internet luring of a child, arson, burglary, bringing contraband into a prison, bribing witnesses or juries, buying a gun illegally and more.

Class 5 felonies include menacing, property theft, voting illegally, stalking, inciting a riot, participating in terrorist training activities, animal fighting, etc.

Class 6 felonies are considered the lowest level and include animal cruelty, failing to register as a sex offender, coercing someone into human trafficking, public indecency and more.

The bill does exclude victims' rights crimes, such as domestic violence and sexual assault, meaning suspects could be arrested and given a cash bail.

Cooke says he doesn't believe that the state has a jail over-incarceration problem, but rather a crime problem that is leading to high jail rates.

He also doesn't believe the changes are necessary since sheriffs already have the authority to limit who comes into their jails based on overcrowding conditions.

Others, like Aurora Mayor Mike Coffman, say they are also concerned with the bill.

"I fully understand why this policy has to be temporarily in place because of public health concerns. I get that. But what I don't understand or what I don't support is saying there were no consequences to doing that and so let's make it permanent. There were consequences to doing that," he said.

Coffman says while there was an initial drop in crime during the pandemic, the crime rates in Aurora and other places like Boulder [have now increased](#). Auto theft, for instance, in Aurora was up 70% from 2019 to 2020.

[According to data](#) from the Colorado Bureau of Investigation, the state experience a nearly 40% rise in car thefts in 2020 as well as increases in burglary, property crime, fraud, theft and more.

"This is just, I think, an invitation for criminals to continue the contact without any interruption of serving time — assuming they even show up. This is a catch-and-release program where for serious crimes you're only given a court date," Coffman said.

While it's unclear whether the jail limits during the pandemic have contributed to the increasing crime, Boulder Police Chief Maris Herold says now it not the time to experiment with jail reform.

Instead, she is calling for the state to study the effect the jail changes made during the pandemic have had to determine whether they are helping or hurting crime rates before moving forward with new legislation.

“We do not know what’s happening because of a crazy year with this pandemic, so why in the world would we want to pass major legislation right now? It’s not the right time. There’s other things we can focus on,” Herold said.

A group of 17 law enforcement agencies from the 5th Judicial District recently penned a letter to their citizens explaining their opposition to the bill and asking residents to reach out to their lawmakers.

Another 19 police chiefs and sheriffs from the 18th Judicial District wrote a separate letter also expressing concern, saying the bill sends the wrong message at the wrong time and contending that the bill would limit the ability of officers to enforce laws. The letter alleges that no chiefs of police were involved in the drafting of the bill or involved in stakeholder discussions before it was introduced.

The Colorado Association of Police Chiefs also opposes the bill, writing in a letter that they see Senate Bill 62 as anti-victim and anti-community safety.

A Family’s take

The family of Michael Marshall believes if these changes would have been in place when he was arrested, he would still be alive today.

Marshall died in 2015 after being arrested by Denver police for trespassing at a motel in which he was living. Marshall had called the police on himself after losing his bible, was inconsolable when police arrived and was taken into custody for trespassing and disturbing the peace.

Both of the crimes are considered minor and were non-violent.

“He was being held for a total of five days, but he was being held on a \$100 bond,” said his niece, Natalia Marshall.

The family did not know that Michael was in jail until they started calling around and trying to find him. During his detention, Michael was not given his

medications, had a psychotic episode and was [thrown to the ground and restrained by deputies](#).

He eventually choked on his vomit, went into a coma, was taken to the hospital and later died. Attorneys for the family [won a \\$4.6 million settlement](#) with the city of Denver over Marshall's death.

Natalia doesn't believe her uncle should have ever been in jail, but should have instead been offered help.

"There was no reason for him to be in jail in the first place. They could've given him a fine. They could've called family members. They could've taken him to a mental health facility — anything — but he definitely did not deserve jail," she said.

She believes Senate Bill 62 would give defendants more of an opportunity to find and make use of community resources for their addictions or mental health needs since they would have access to them rather than being housed in jail.

She also believes it would force police officers to take a step back and really assess a situation rather rushing to arrest a person. More than anything, she hopes this bill will spare people like her uncle from long jail stays on small bonds.

Cautious Support

At first, Denver District Attorney Beth McCann was opposed to Senate Bill 62. However, after some changes to allow law enforcement to arrest people for crimes involving victims, McCann testified in favor of the legislation during its first committee hearing.

"I think this bill is attempting to address that in a way that protects community safety but also acknowledges that we often have people in jail who are awaiting trial that don't really need to be there," she said.

The Colorado District Attorney's Council has taken a neutral position on the bill.

Over the course of the pandemic, McCann says Denver has looked at early releases for people who have served the majority of their sentences or who were pregnant, elderly, etc. as a way to limit jail populations.

The Denver DA's office also took a closer look at the kinds of arguments they would make for bonds and holding people before their trials or dispositions, agreeing to more PR bonds so that more people could be released. They also agreed to lower cash bonds more often than they ordinarily would have.

While this was happening, the DA's office made note of each case and is now in the process of evaluating the data to understand whether the defendants who were offered lower cash bonds or PR bonds are appearing for court, committing new crimes, etc.

Denver has also experienced an increase in crime, but McCann says it unclear whether that's related to the pandemic jail changes.

"One of the biggest concerns is if you have a lot of money, you can make your bond. And if you don't, you can't, and that isn't really the way bond is supposed to work," McCann said. "I think the courts and the criminal justice system as a whole have been really trying to analyze how do we get a more fair system."

McCann likes the idea of issuing a felony summons in some low-level criminal cases rather than the automatic arrests. Even before the bill, the city had created a committee to consider whether issuing more felony summonses was a better approach.

Among the changes she had fought for in the original bill: a change to the failure to appear portion saying that if a civilian witness was subpoenaed for the hearing or if any witness shows up and the defendant fails to appear, a cash bond could be issued.

A second change allowed for a suspect to be issued a cash bond for a probation violation if they didn't show up to treatment for either sexual assault or domestic violence.

There are still a couple of areas of the bill McCann says she would like to see amended, such as wanting officers to be able to arrest someone for car theft. But overall, she believes the bill is the right move for the state.

“Certainly, there are plenty of people who need to be in jail, but we’re not putting those people in jail who are going to get out on bond anyway because of the nature of the crime,” she said.

The difference in bonds

If Senate Bill 62 passes, it could have a significant impact on the bail industry in the state.

Jeff Clayton, the executive director of the American Bail Coalition, doesn't think the bill would eliminate the bail industry in the state but says it would significantly reduce it. He insists bonds play an important role in the criminal justice process and said reverting to only PR bonds would affect that process.

“A PR bond is simply a promise to appear, whereas if you’re required to post what’s called a cash bond or a surety bond in Colorado, then there’s some financial backing to that bond that guarantees your appearance in court,” Clayton said. “Which essentially would require a third-party or the defendant to post some property to have some skin in the game.”

When that happens, Clayton says whoever put up the financial backing, whether it’s a bondsman or family member, will put pressure on the defendant to make their court dates.

Even in normal times, Clayton describes the cash bond system as a mixed bag; sometimes defendants show up to court and other times they don’t.

If a defendant uses a bond company and fails to appear, bail agents would try to track them down and arrest them. Bail agents arrest roughly 3,000 defendants who fail to appear each year in Colorado, according to American Bail Coalition data.

The part of the bill he is particularly concerned about is the failure to appear.

“You can just thumb your nose at court three times and say, 'I just didn't feel like coming,' and essentially there's nothing they can do to you. And that's just going to slow down the system and delay justice for victims. That's a bad standard,” he said.

Each time a person fails to appear, an arrest warrant would be issued. The defendant could be detained and booked but would then need to be re-released on another PR bond at least two more times before judges would have the discretion to issue a cash bond.

Maes, with the ACLU, contends that a loss of freedoms from an arrest after failing to appear is punishment enough and that cash bonds aren't necessary.

Still, Clayton believes judges need to be able to have discretion over the bond system.

A big fight ahead

Senate Bill 62 is easily one of the most-discussed bills of the 2021 legislative session so far.

It has elicited hours of passionate testimony, letters, a tit-for-tat of opinion pieces in local newspapers and more. It has also split lawmakers.

If passed, the bill would result in the biggest change to Colorado's jail practices in years. However, it faces a major fight ahead as it makes its way through the legislature.

Editor's Note: *Denver7 360 stories explore multiple sides of the topics that matter most to Coloradans, bringing in different perspectives so you can make up your own mind about the issues. To comment on this or other 360 stories, email us at 360@TheDenverChannel.com. See more 360 stories [here](#).*

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Colorado Public Radio

Fewer People Accused Of Low-Level Crimes Would Go To Jail — Or Stay In Jail — Under Reform Bill

By [Allison Sherry](#) | May 26, 2021



Hart Van Denburg/CPR News Police tape in the parking lot of Denver's South High School on March 29, 2020.

A proposed law that puts new limits on when law enforcement officers can arrest people and when judges can order them held in jail with a cash bond is heading towards the full state Senate for a vote.

This isn't the first time this session state lawmakers have weighed the merits of a jail depopulation proposal.

An [earlier bill](#) would have done much the same thing, though it included some low-level felonies, like auto theft. Aspects of that bill, including the auto theft provisions, proved unpopular, even among some Democrats, and so backers scrapped it and started anew.

“For a variety of reasons ... and significant misinformation and mischaracterization of that bill, I’m here today to reset that conversation [with a new bill](#),” said [state Sen. Pete Lee](#) in testimony in front of the Senate Judiciary Committee, earlier this month.

Lee described the measure as “a public safety and social justice bill,” one aimed at “keeping people accused of low level crimes and those who are not a safety risk out of jail, and ensuring that fewer people are incarcerated pre-trial because they don’t have money to pay bond.”

Reforming bail bonds and preventing 'unnecessary' arrests

The proposal requires judges to offer personal recognizance, or no-money bonds, on all misdemeanors and a wide range of low-level drug and felony crimes. It does give judges discretion if they believe the suspect might flee prosecution or threaten the safety of another.

Backers of this change, including the American Civil Liberties Union, say the justice system is tilted in favor of those who have the money to pay to get out of jail for low-level crimes. They argue, if the measure of whether someone stays locked up comes down to being able to post a cash bond or not, the system is prioritizing wealth, not public safety.

Democrats hold a five seat majority in the Senate. With Republicans united in opposition to the bill, backers can only afford to lose two Democratic votes. So they're trying to reassure concerned moderate senators that this new version is a compromise. The bill passed its preliminary Senate vote Wednesday afternoon and will likely get a final, recorded vote Thursday. If it passes, it will head to the House.

In addition to ensuring more people who are jailed are released on PR bonds, the bill also aims to avoid many arrests in the first place.

Officers are instructed to write tickets instead of taking someone in on all misdemeanors, traffic offenses, petty offenses, drug petty offenses and municipal offenses. There are some exceptions, including if an officer is unable to verify a person’s identity absent an arrest.

Arrests would still be allowed if the offense falls under [the Victim Rights Act](#), involves illegal possession of a firearm or constitutes unlawful sexual behavior or failure to register as a new sex offender.

To bolster their opposition to the proposal, law enforcement officers released a long list of crimes that would no longer be jail-eligible, including concealing a death, cruelty to animals, aggravated motor vehicle theft if the value of the car is less than \$1,000 and some arson charges.

“If this bill passes, there could be numerous crimes someone could commit and never have to go to jail,” said Colorado Springs Police Chief Vince Niski in Senate testimony. “This completely takes away our discretion in dealing with repeat offenders ... And, unfortunately, this represents thousands of crime victims.”

Supporters of the proposal say low-level arrests disproportionately target people of color and often escalate.

But lined up behind this bill are criminal justice advocates, some crime victims and people whose lives were derailed after going to jail for low-level offenses.

“The harm reduction that this will achieve will eventually save lives and reduce the trauma that is associated with needless arrests,” said Denise Maes, public policy director for the ACLU of Colorado. “This bill asks us to rethink the status quo.”

Maes noted the bill does allow officers leeway to make an arrest if they feel it’s in the interest of public safety. And that people would still face arrest for sex offenses, DUIs, illegal possession of a deadly weapon and other dangerous crimes.

When it comes to low-level arrests, backers of the bill point to real-life examples of people picked up for minor crimes and then the situation escalated — including [Michael Marshall and Marvin Booker](#), two Denver men arrested on low-level charges who died in jail at the hands of deputies.

“These arrests ... disproportionately involve people of color and they often escalate into violent confrontations and in this regard this bill is both good for police and for the community,” Maes said.

Catherine and Javier Mabrey shared their own harrowing story with state senators at the recent hearing.

Javier recalled the day in his childhood when a police officer came to get him from school, because his mom had been jailed for not appearing in court on a barking dog ticket.

“This issue is personal for me; I will never forget the night my mother did not pick me up from school,” Javier Mabrey, now a lawyer and state House candidate, said.

Catherine Mabrey tearfully testified she was held on a \$500 bond — something she couldn’t afford to pay at the time.

Opponents like law enforcement and prosecutors say the bill would jeopardize public safety.

But many law enforcement officers and some prosecutors warn that the bill goes too far, and liberalizing when they have to release people — even for low-level offenses — would jeopardize public safety.

In addition to the new non-jailable offenses, there is another list of crimes — including some low-level felonies — that require a judge to issue no-money bonds for suspects once they're jailed.

There are some exceptions, but law enforcement says this provision is worrisome because without any money attached to getting out of jail — even for people with the ability to pay — there is little incentive to return to court and to stop committing crimes in the first place.

“If this bill were truly just about low-level offenses, I would join you in supporting it,” said 18th Judicial District Attorney John Kellner. “There are things that are dramatically dangerous to the public. I’m not just talking about a ‘urinating in public’ case. We’re talking about [mandated PR bonds for] stalking ... sexual assault... unlawful sexual contact by force ... sexual exploitation of a child.”

One Colorado Springs municipal judge said that he worried the proposal would make it even easier for people to blow off court dates.

Judge HayDen William Kane II warned lawmakers that his own experience presiding over a municipal court should be a warning of what could happen if the bill is enacted.

Under current rules, none of the people who appear before him for violating local ordinances are eligible for jail. And Kane said that's led many of them to skip court completely.

“Word on the street was there are no consequences for not showing up for municipal court,” Kane said. “(We’ve seen) about a 30 percent drop in the amount of people who are appearing in municipal court and that’s concerning. This would codify that ‘automatic PR bond’ world and I worry that the numbers could become worse than that. Today ... we had 38 people scheduled to show and I had 10.”

Editor's Note: *This story has been updated with the result of Wednesday's vote and to correct an editing error that mischaracterized the size of the Democratic majority in the Senate.*

Thursday, May 27, 2021

POLITICS

Bill to end cash bail, limit arrests, for some low-level offenses passes Senate



by: [Gabrielle Franklin](#)

DENVER (KDVR) — A bill to end cash bail and limit arrests for some low-level offenses passed the Colorado Senate on Thursday, marking a compromise after language that would have also limited arrests for some felonies was removed.

[Senate Bill 273](#) is now headed to the House. Lawmakers filed the bill after months of contention over [Senate Bill 62](#), which had the same provisions designed to reduce jail populations, but would have also banned arrest for some felonies.

That did not sit well with police or lawmakers. And now that SB-273 has advanced — it's a bill from the same sponsor but without the provision to ban arrest for Class 4, 5 and 6 felonies — those opposed to the first measure still are not happy about it.

Supporters say one key tweak — removing the felony language — makes all the difference.

“When I heard at the outset that the bills are identical, I was confused, because [Senate Bill 62](#) covered felonies 4, 5 and 6, and they were removed (in the new bill),” said the bill’s prime sponsor, Sen. Pete Lee, D-El Paso.

Still, the language calling on officers not to arrest people suspected of some offenses, like traffic and petty drug or misdemeanor offenses, remains. Advocates say this gives them hope it will still reduce incidents like [the rough arrest of Karen Garner in Loveland](#).

“We are hoping, still, is that we reined in a little bit of discretion on the part of police, because we do think they need to be reined in a little bit,” said Denise Maes, of the ACLU of Colorado. “That’s really the hope, and I think it will be the result of this senate bill.”

Though the elements surrounding arrests for felonies was removed, the part of the bill that would eliminate cash bonds for those same levels of felony offenses remains.

“They are selling the bill as though it is just a misdemeanor bill, but it’s really not. We’re telling police you can arrest them, but we’re telling the judge you can’t keep them in jail after the fact,” said Jeff Clayton, executive director of the American Bail Coalition, an opponent of the bill.

Clayton and other leading opponents argue the measure will allow more dangerous people to roam the streets.

“The only people that are going to benefit from this are repeat and violent offenders who have done this multiple times,” Clayton said. “These are the people judges are putting bails on right now. These are the people the legislature is going to tell judges they can’t put bail on. Any first time, low level, non-violent offenders, judges will generally kick them out on their own recognizance anyway.”

Despite all the changes in this bill, many police groups still are not on board with the new effort. It’s on its way to the House now.

CALIFORNIA★POLITICAL
REVIEW

NEW CALIFORNIA BAIL LEGISLATION DESTROYS PRESUMPTION OF INNOCENCE

July 8, 2021 By Stephen Frank

The people of California made it clear in 2020—they overwhelmingly rejected Prop. 25, which would have ended bail in California. The people of California did not know that DA's would refuse to uphold the law. They did not know that Democrats in the legislature would give the finger to the voters and people of California. Senator Hertzberg has a bill SB 262 would end the right to bail—and in affect allow criminals to go free and innocent people stuck in jail.

“Still, the most worrisome part of Senate Bill 262 is what it does to the presumption of innocence. It creates economic incentives in the bail system that make sure only the guilty or those that will flee from justice will receive access to bail. How? Under the bill, bail agents who post bonds for defendants will have to offer a premium refund if: (1) no charges are filed within 60 days of arrest; (2) the defendant appears; or, (3) the charges are dismissed.

In practice, this is going to mean that only those who are actually innocent will suffer. Often times a defendant will have proof beyond a reasonable doubt that they did not commit the crime with which they've been charged. A bail agent would not be able to post a bond for these.”

Corruption? What else would you call a system where elected officials refuse to do their job? Worse where elected officials overturn the vote of the people? That is called a totalitarian State. Why vote, if corrupt politicians will ignore the vote?

NEW CALIFORNIA BAIL LEGISLATION DESTROYS PRESUMPTION OF INNOCENCE



Photo credit: Michael Coghlan via Flickr

By Gloria Mitchell, President California Bail Agents Association, 7/9/21

The presumption of innocence, as the U.S. Supreme Court has said, is axiomatic in our criminal justice system. Yet, if it has its way, the California Legislature would destroy this core concept through the passage of Senate Bill 262. The bill would eliminate the constitutional right to bail in

the state and cause irreparable harm to the truly innocent, while allowing defendants who are guilty to be set free.

California voters already rejected Proposition 25 in the last election. Instead, they opted to allow individuals to have access to bail and give them the opportunity to be released from jail pending trial. Defendants are also held accountable for their actions and know that if they flee from justice they will be returned to face the consequences.

Despite this fact, state lawmakers seem intent on going against the will of the people, as they continue their crusade to “end cash bail” through Senate Bill 262. This ill-conceived piece of legislation would also return us to the pandemic zero-bail process, which will further erode public safety in California.

Still, the most worrisome part of Senate Bill 262 is what it does to the presumption of innocence. It creates economic incentives in the bail system that make sure only the guilty or those that will flee from justice will receive access to bail. How? Under the bill, bail agents who post bonds for defendants will have to offer a premium refund if: (1) no charges are filed within 60 days of arrest; (2) the defendant appears; or, (3) the charges are dismissed.

In practice, this is going to mean that only those who are actually innocent will suffer. Often times a defendant will have proof beyond a reasonable doubt that they did not commit the crime with which they’ve been charged. A bail agent would not be able to post a bond for these individuals because it would trigger a refund. On the other hand, if a defendant confesses guilt to the bail agent, then two of the three refund provisions evaporate, thus making it more likely the guilty will get out of jail.

For appearances in court, we have the same problem. If a defendant is going to appear, bond cannot be posted and the individual must remain in jail. Incredibly, if a defendant never shows up for court, he or she would be considered a better risk under this scheme.

Presciently, Supreme Court Justice Thurgood Marshall once said that the shortcuts we take with the guilty only harm the innocent and, ultimately, ourselves. Making sure that all persons charged with a crime have the presumption of innocence protected is critical. Every time we make a mistake and treat someone as guilty when they are presumed innocent, we contribute to the destruction of the rule of law and our system of justice.

If one were to take a surface-level look at the situation presently facing society, it might be easy to ask why should defendants who are ultimately wrongfully arrested and charged with a crime be forced to eat the cost of their freedom? The issue here is the desire for some to cast blame and bail has served as a convenient scapegoat for years. However, bail is not the cause of the problem. Rather, it exists solely for the purpose of getting people out of jail. If anything, the problem lies with the criminal justice system itself in California. But no one in authority will admit to that because the state allows jurisdictions to invoke sovereign immunity and not have to worry about paying anyone back. The truth is, those who are over-arresting the innocent should be held financial culpable, not those working to help them avoid pretrial detention for crimes they did not commit.

Senate Bill 262 completely flips the presumption of innocence on its head and destroys it in California for all time. If it passes, the guilty will go free and the innocent will rot in our state’s jails. Ultimately, it comes down to an inarguable truth. Regardless of zero bail or affordable bail, pretrial freedom should never hinge on the guilt or innocence of a defendant that has yet to be decided.



[WHATMATTERS](#)

Bail reform redux

BY BEN CHRISTOPHER
JULY 13, 2021



The Bail Boys bail bonds displays a "No on Prop 25" poster in downtown Los Angeles on Oct. 21, 2020. Prop. 25 would have ended California's current cash bail system and replaced it with a three-tier risk assessment system. Photo by Tash Kimmell for CalMatters.

A bill that would eliminate cash bail for all but the most serious offenses is scheduled to get its first look-see in the state Assembly this morning.

Yes, we're having this debate again. In 2018, Democratic Sen. Bob Hertzberg of Van Nuys [passed a bill](#) doing away with the practice of charging people to get out of jail before trial. Then-Gov. Jerry Brown signed the bill into law, but bail bonds companies put a referendum on the 2020 ballot asking voters to nix it. [They won.](#)

Now, Hertzberg is back with a new, [modified version](#). The bill would allow judges to charge bail only in cases of murder and other violent felonies — though the exact amounts would be set by the state's Judicial Council. And if the arrestee isn't charged or shows up to all their court dates, bail bond companies would have to refund most of their payments.

No surprise, bail bond companies aren't thrilled. Jeff Clayton, executive director of the American Bail Coalition, a trade group, called the bill "unconstitutional" and said it eviscerates the bail bond business model: "The long and the short of it is that there won't be bail agents to bail people under this bill."

You can expect to hear a lot of political debate about crime in the months to come. Why?

Let us count the reasons:

[Murders and car thefts are up](#). President Joe Biden is [calling for more police funding](#) — contrary to [some Republican claims](#) that he wants to do the opposite. Some political commentators are [warning progressive to take the issue more seriously or risk the electoral consequences](#). The sheriff in L.A. County is [running against "the woke left."](#) Progressive prosecutors in [San Francisco](#) and [Los Angeles](#) are facing down recall campaigns.

And, oh, yeah, [so is the governor](#).



Ben Christopher

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Ben covers California politics and elections. Prior to that, he was a contributing writer for CalMatters reporting on the state's economy and budget. Based out of the San Francisco Bay Area, he has written... [More by Ben Christopher](#)

Los Angeles Times

CALIFORNIA

California voters rejected ‘zero bail.’ Now lawmakers weigh new overhaul of system



Bad Boys Bail Bonds is located across the street from the Los Angeles County Jail. State lawmakers are debating legislation that would give judges greater power to reduce bail if it will be a financial hardship for defendants. (Gary Coronado/Los Angeles Times)

BY [PATRICK MCGREEVY](#) | STAFF WRITER
SEP. 7, 2021 5 AM PT

SACRAMENTO — Ten months after California voters rejected a state law to eliminate cash bail for many offenses, a new fight is brewing in the Legislature over an alternative plan by lawmakers that would slash the amount arrestees must pay to get out of jail.

The national bail industry that spent \$10 million to defeat a “zero bail” measure on last November’s ballot is lobbying hard against the new proposed legislation and warns it will sue if the bill passes because it would put them out of business.

The threat comes after state Sen. Bob Hertzberg (D-Van Nuys) recently amended his bill to remove a zero bail requirement for many less serious offenses.

Lacking the votes in the Assembly to eliminate bail, Hertzberg changed his legislation to instead require judges to determine whether cash bail is necessary to reasonably protect the public. If the court determines bail is necessary, the judge would be required to determine a defendant’s ability to pay bail before setting it.

Judges must also order the return of money paid to a bail company if charges are dropped or the defendant makes all court appearances.

Hertzberg’s Senate Bill 262 also would cap the amount of surcharge that a bail bonds person can retain at 5% of the amount paid by the arrestee, which bail industry leaders say will put them out of business.

The senator said he is motivated by the same concern that caused him to author the last zero bail bill that was approved by the Legislature in 2018 but overturned last year through a statewide referendum, Proposition 25.

“The bail system is unfair because it means your liberty is determined by the size of your wallet,” Hertzberg said.

He said his new legislation is consistent with the [findings of the California Supreme Court](#) in March that determined it is unconstitutional to require defendants to remain behind bars simply because they cannot afford bail.

The decision said that judges can keep defendants behind bars when “clear and convincing” evidence shows there is no other way to protect the public and ensure the defendants’ return for court appearances.

Topo Padilla, a Sacramento bail bondsman, said that he believes Hertzberg is on a personal mission to eliminate the bail industry and that his new bill would have much of the same effect as the “zero bail” proposal.

“Judges will be left with no alternative other than to say, ‘This guy can’t afford a bond, so I have to let him go on terms other than posting a bail bond,’” said Padilla, who is president of the Golden State Bail Agents Assn.

Currently, if someone is arrested and has to post \$50,000 bail, they have to provide a non-refundable premium of 10%, or \$5,000, to guarantee that they will appear at their court hearings.

Padilla said Hertzberg’s bill would require him to return 95% of that premium if the person appears in court, leaving the bond firm with \$250 on a \$50,000 bail bond. The bail industry cannot afford to operate with that 5% cap, Padilla said.

“He is doing what he is doing because Bob Hertzberg hates our industry,” Padilla said. “He wants us gone.”

Hertzberg said he doesn’t think it’s fair that someone who gets out on \$50,000 bail loses the \$5,000 premium if the charges are dropped a day later.

“The bail industry over the years has become a predatory lending business,” he said.

Under SB 262, he said, “You get to make a reasonable rate of return but you don’t get to gouge people.”

Hertzberg said he wanted to go further with his bill, which until a week ago would have required zero bail for all but serious crimes.

“We took out zero bail because as I went around and talked to members, they looked at it and it created problems. I couldn’t get the votes,” Hertzberg said.

Even with the changes this week, the legislation is supported by groups including the Western Center on Law and Poverty, the Anti-Recidivism Coalition and Californians for Safety and Justice.

“We strongly support SB 262 because it moves us closer to a pre-trial system that prioritizes public safety and not the size of a person’s bank account,” the three groups said in a statement. “We continue to champion the bill with its changes because it takes California further from its habit of perpetuating cycles of debt and poverty via incarceration — particularly in over-policed Black and brown communities.”

Because bail companies could, as they did in 2018, seek to overturn the bill on the ballot next year, Hertzberg has added an urgency clause to SB 262 — a provision that would make the law take effect immediately and exempt from the challenge of another statewide referendum. But urgency bills require approval of two-thirds of legislators in both houses, and the effort could run out of time before the Legislature adjourns later this week.

Should the bill be signed into law, the bail industry has promised to file a lawsuit that will allege the proposal is too similar to last year's Proposition 25.

Padilla believes the relationship between Hertzberg and the bail industry took a turn for the worse in 2018 when a few people in the bail industry engaged in personal attacks against the senator, advertising allegations that he had made unwanted physical contact with female state lawmakers. A [legislative investigation](#) in 2018 concluded that his behavior made some women uncomfortable but wasn't sexually motivated.

"Some people in my industry, unfortunately, got personal with him," Padilla said.

Hertzberg denied that the attacks, which included social media posts and mobile billboards, had anything to do with his decision to press forward with the new bail overhaul bill this year.

"I've been involved in politics since Ronald Reagan was governor," he said. "I have been involved in more fights than I can count. I never take it personal in that respect. It's not my nature."

The Morning News

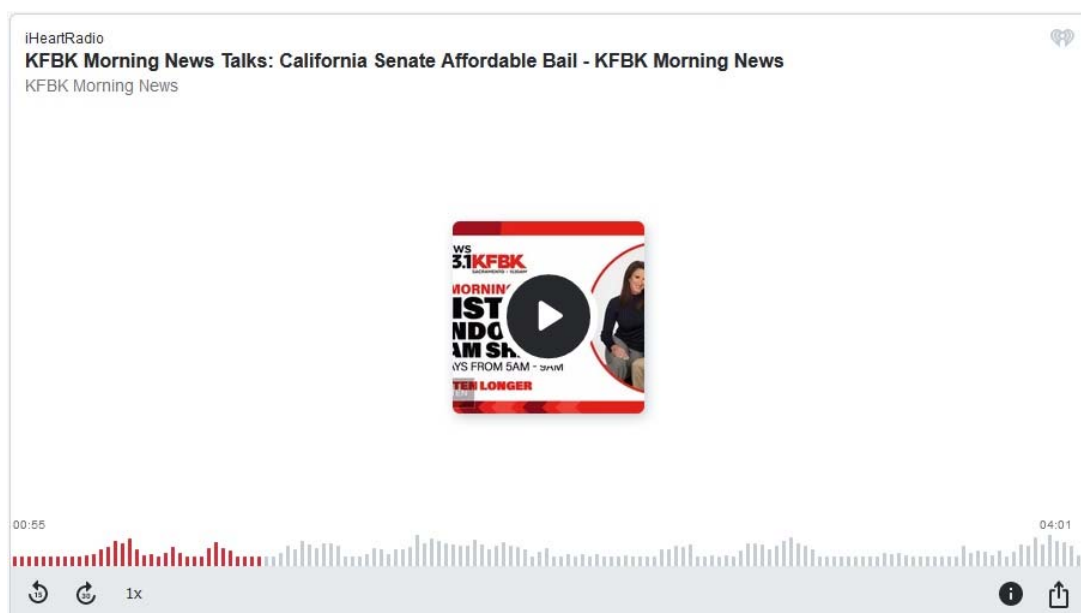
California Senate Will Re-Consider Bail Reform Bill Defeated By Voters

By Sasha Margulies, iHeart MediaSep 7, 2021



The California Senate will once again consider a bail reform bill that's already been defeated by voters.

Senate Bill 262 is being touted as a fix for the cash bail system which would guarantee the right to “affordable bail” for everyone, including those charged with serious felonies. Lawmakers are set to vote on SB-262 by the end of this week.



NEWSMAX

Harris-Backed Bail Fund Helped Release Man Who Was Then Arrested for Murder



(Evelyn Hockstein/Getty Images)

By Eric Mack | Tuesday, 07 September 2021 02:23 PM

A man recently arrested for murder had just been released on a domestic-abuse charge with the help of a bail fund hailed by Vice President Kamala Harris.

During the 2020 presidential campaign, Harris seized on the violent race riots through the U.S., [urging her 18.8 million Twitter followers](#) to support the Minnesota Freedom Fund "to help post bail for those protesting on the ground in Minnesota."

George Howard was arrested Aug. 29 after he allegedly shot Luis Martinez Ortiz, 38, to death in a road rage incident, the [Minneapolis Star-Tribune reported](#).

The MFF is now acknowledging it has helped the alleged domestic abuser get released, but claiming alleged dangerous criminals have the right to be free awaiting trial, [tweeting a statement](#):

"We are aware of reports of the tragic and fatal shooting in Minneapolis earlier this week allegedly involving George Howard, an individual the Minnesota Freedom Fund had previously provided with bail support.

"MFF believes that every individual who has been arrested by the law enforcement is innocent until proven guilty, and if a judge deems them eligible for bail, they should not have to wait in jail simply because they don't have the same income or access to resources as others."

Last summer's George Floyd riots helped raise a \$35 million "windfall" for the MFF, American Bail Coalition Executive Director Jeffrey Clayton told [The Washington Free Beacon](#). In 2018, the MFF raised just \$100,000 for the whole year, according to [tax filings](#).

The MFF does acknowledge the "safety and needs" of the community need to be considered and will "be monitoring" the case, [tweeting](#):

"Under new leadership, MFF has implemented changes to its policies and procedures, and we will continue to assess them to ensure that we are being responsive to the safety and needs of our community.

"MFF is closely monitoring developments in the case and will share more information as additional facts become known."

While Harris billed the MFF to help bail out George Floyd protesters, the fund had reportedly used just \$3.5 million to bail out alleged criminals, of which just \$210,000 went to protesters, according to Fox News.

Instead, alleged sexual abusers like Timothy Wayne Columbus, 36, who is accused of having penetrated an 8-year-old girl, benefited from the Harris-backed bail funds, according to the Free Beacon.

The White House nor the MFF responded to the Free Beacon's requests for comment.



[Biden Administration](#)

Kamala-Backed Bail Fund Freed Alleged Domestic Abuser Now Charged With Murder

VP Harris urged followers to donate to Minnesota Freedom Fund on campaign trail



[Collin Anderson](#) • September 7, 2021 11:50 am

A bail fund promoted by Vice President Kamala Harris freed an alleged domestic abuser just weeks before police arrested him again for murder.

Minneapolis police [arrested](#) George Howard on Aug. 29 after the career criminal allegedly shot 38-year-old Luis Martinez Ortiz to death following a road rage incident. Roughly three weeks earlier, the Minnesota Freedom Fund bailed out Howard following a domestic violence charge, the group confirmed in a statement, which it deleted following publication of this article.

"We are aware of reports of the tragic and fatal shooting in Minneapolis earlier this week allegedly involving George Howard, an individual the Minnesota Freedom Fund had previously provided with bail support," the group said Friday. "MFF believes that every individual who has been arrested by the law enforcement is innocent until proven guilty, and if a judge deems them eligible for bail, they should not have to wait in jail simply because they don't have the same income or access to resources as others."

Harris faced criticism on the 2020 campaign trail after she [urged](#) her followers to "chip in now" to the Minnesota Freedom Fund "to help post bail for those protesting on the ground in Minnesota" days after George Floyd's death. According to American Bail Coalition executive director Jeffrey Clayton, the group "definitely got a windfall" in the wake of the Democrat's endorsement, raising a staggering \$35 million as violent protests swept the nation.

Just a fraction of the bail money, however, was used to release protesters and rioters. In the months following Floyd's death, the Minnesota Freedom Fund spent nearly \$3.5 million bailing people out of jail—just \$210,000 went to those who participated in the unrest, Fox News [reported](#) in 2020. The group helped release heinous criminals, such as Timothy Wayne Columbus, a 36-year-old man who allegedly penetrated an eight-year-old girl.

In 2018, years before Floyd's death, the Minnesota Freedom Fund raised just \$100,000, according to its [tax filing](#).

In addition to Harris's public support, at least 13 Biden campaign staffers trumpeted their donations to the Minnesota Freedom Fund in 2020. Then-campaign spokesman Andrew Bates, who now serves as White House deputy press secretary, defended the staffers who donated, calling cash bail a "modern day debtors prison."

Neither the White House nor the Minnesota Freedom Fund returned a request for comment.



Latest California bail reform effort dies for this year

By DON THOMPSON September 10, 2021



Troy Davis consults with public defenders Meghan Cunningham and Norman Dawson, center, as he is charged in Sacramento Superior Court with six felony counts, including murder, in Sacramento Superior Court on Tuesday, Sept. 7, 2021, in Sacramento, Calif. Davis was charged with murdering 61-year-old Mary Tibbitts after breaking into her home, sexually assaulting her, killing her two dogs and setting the house on fire, authorities said. (Paul Kitagaki Jr./The Sacramento Bee via AP)

SACRAMENTO, Calif. (AP) — A parolee's arrest in a killing after he'd been released without bail helped torpedo the California Legislature's latest attempt to reform the cash bail system for this year, the bill's author said Thursday.

Democratic Sen. Bob Hertzberg unsuccessfully tried several variations of a new measure after voters in November defeated a law what would have ended cash bail in favor of risk assessments.

His initial bill cleared the Senate but ran into opposition in the more conservative Assembly ahead of Friday's legislative deadline, although Democrats control the needed two-thirds majorities in both chambers.

The California District Attorneys Association gained new traction in opposing the measure this week when a parolee was arrested and charged in the slaying of a Sacramento woman found dead along with her two slain dogs inside her burning home.

Troy Davis, 51, was released without bail on suspicion of auto theft in June and did not appear for his arraignment.

“The gruesome murder of the Sacramento woman had several of my colleagues reaching out with concerns,” Hertzberg said in a statement to The Associated Press. He said his proposal “actually could have prevented that parolee from being released in the first place” but that he ran out of time to explain that to reluctant lawmakers before Friday’s adjournment deadline.

“We made a lot of progress this year and we’ll be back next year in stronger shape,” Hertzberg said.

El Dorado County District Attorney Vern Pierson, the district attorneys association’s president, said lawmakers supporting changes to the bail system are “expressing sympathy toward prisoners instead of prioritizing public safety.”

Hertzberg said he will keep working for “a fair, safe and equitable bail system, free of industry greed.”

The current bail system, he said, “keeps Californians locked up who pose no threat to the public and who have been convicted of no crime, simply because they cannot pay what the bail industry demands.”

Hertzberg recently heavily amended his original bill after it ran into opposition in the Assembly.

It would now set a statewide bail schedule that takes into account suspects’ finances and returns the money if charges are dropped.

It follows the California Supreme Court ruling in April that judges must consider suspects’ ability to pay when they set bail, and Hertzberg said his bill implements the high court’s ruling.

It also follows a statewide judicial order last year that set bail to \$0 for many crimes during the early months of the coronavirus pandemic in a bid to reduce the vulnerable populations in county jails.

Hertzberg’s bill originally mimicked that \$0 bail order when it cleared the Senate.

His amended bill requires the Judicial Council to set a statewide bail schedule by 2023, replacing schedules that vary across the state’s 58 counties.

The council would have to consider whether non-monetary conditions like electronic monitoring could protect the public and victims while reasonably assuring that suspects would show up for court appearances.

Judges would have to take suspects’ financial condition into account. They would also have to return suspects’ money or property if charges are dropped or the suspect showed up for all court appearances.

Bails bonds companies could keep a 5% surcharge on that money. Hertzberg has said that would be an improvement over a current system he equated to “predatory lending.”

Bonding companies and insurers said the return policy would make the bail industry unsustainable. The American Bail Coalition said that as a practical matter, the bill would end California’s bail industry because most suspects could say they couldn’t afford to pay it.

Setting up a promised court fight should the bill become law, the Golden State Bail Agents Association argued that legislators’ latest bail reform effort “is a bad faith

attempt to thwart the will of the voters,” 55% of whom rejected Proposition 25 in November.

Bail is money or property that can be forfeited if suspects fail to appear for trial. Traditionally, judges set bail based on suspects’ criminal records and pending charges. Critics said that allows wealthy suspects to go home to prepare for trial while lower-income defendants remain jailed, a system they said encouraged some innocents to plead guilty to get out of jail.

The Anti-Recidivism Coalition, a reform group that supports the bill, projects that it currently costs nearly \$4.6 million a day to keep about 40,000 offenders housed in county jails.

While the bail bill stalled, lawmakers sent several other criminal justice bills to Gov. Gavin Newsom on Thursday.

The first requires judges to give [“great weight” to mitigating circumstances](#) that favor dismissing enhancements that can greatly extend the length of prison sentences, unless doing so would endanger public safety. Democratic Sen. Nancy Skinner said enhancements are much more likely to be imposed on Black suspects. Her bill would enact 1 of 10 recommendations of Newsom’s California Committee on the Revision of the Penal Code.

The second enshrines court rulings that say judges must impose [the middle of three possible sentences](#) allowed by law unless there are mitigating or aggravating circumstances. The bill says aggravating circumstances extending a sentence must be admitted by the suspect or found true beyond a reasonable doubt by a judge or jury.

A third [decriminalizes jaywalking](#), a crime that Democratic Assemblyman Phil Ting says is arbitrarily enforced, most often against people of color — sometimes leading to deadly confrontations with police. Fines can reach hundreds of dollars, which he said is too much for a relatively minor infraction. Virginia this year became the first state to decriminalize jaywalking.

POLITICS

Effective or burdensome? Tennessee lawmakers take on cash bail reform

Yue Stella Yu

Nashville Tennessean

September 14, 2021



Tennessee lawmakers are looking to fine-tune the state's cash bail system — one that some say is effective but others consider burdensome on the state's working poor.

For two days, legislators heard from criminal justice reform advocates, district attorneys, local officials, judges, sheriffs and representatives from the bail industry as they brainstormed legislative ideas.

Reformers highlighted the state's rising jail population and the high cost to taxpayers in detaining Tennesseans for nonviolent crimes before trial — some of whom are ultimately acquitted — and pleaded with lawmakers to develop custom risk assessment for each defendant and save cash bail as a last resort.

But opponents to bail reform argue that, while there is room for improvements, doing away with the current bail system, which they consider effective, would risk letting loose offenders, contribute to higher crime rates and eventually add costs to local law enforcement for re-arrests.

The two-day hearing follows an investigation earlier this year by Knox News that found judges and magistrates have been brushing aside state law and making it the standard, rather than the exception, to require cash bail for the accused to remain out of jail pending trial.

The discussion also comes months after Gov. Bill Lee signed into law a pair of criminal justice bills that divert more nonviolent offenders from jail and help keep those on parole or formerly incarcerated from returning to prison.

But any limits on the cash bail system could face staunch opposition from conservative lawmakers who have long taken a "tough on crime" stance. The committee hearing followed more than 20 Republican-backed measures the legislature passed earlier this year that enhanced sentencing for both violent and non-violent offenders, adding more than \$40 million to the state's \$1.1 billion in annual prison budget that continues to rise.

Sen. Ferrell Haile, R-Gallatin, introduced bills during the regular session that would have enhanced regulations over bond agencies and allowed defendants to pay 10% of the cash bail amount, as well as any bail bond tax and an administrative cost equivalent to 10% of the bail, for their release if their bond amount does not exceed \$7,500. Currently, a defendant must pay the entire amount in case of a cash bail, or pay up to 10% of the bail amount to a bond company, for their freedom.

"Currently we have a system whereby the working poor are forced to stay in jail simply because they don't have money to make bail," he said during a committee hearing in March. "We current allow folks out that have committed much more grievous crimes than we do misdemeanors. We let them out because they have money to pay."

Several states have taken steps to change their bail bond systems, and those that have tried to eliminate cash bail faced backlash shortly after such laws were passed.

New York in 2019 eliminated pre-trial detention and cash bail for most arrests, only for lawmakers to give judges more discretion over bail during the next legislative session. The California legislature in 2018 passed a law eliminating its cash bail system, although the measure was reversed by voters last year after staunch opposition from the bail industry.

Jail population soared over past decade, costing Tennessee taxpayers millions

Advocates for reform measures argued Monday that Tennessee's cash bail system should be the last resort, as detailed in the state law.

Instead, they said the method is used almost by default and weighs heavily on those who remain in jail simply because they cannot afford to post bail, adding to the state's soaring jail population.

In 2019, 25 counties in Tennessee saw zero "release with one's own recognizances" — a no-bail release usually offered to defendants who the judge trusts will not flee from a court appearance, according to data presented by Jasmine Heiss, director of a mass incarceration research initiative by national advocacy group Vera Institute of Justice.

"If someone has money bonds set in their case, and they sit in jail for even a short amount of time when their grandmother, or their husband, or their parents scrape together the money to bail them out, not only does that cost counties, but the collateral consequences are increasing the longer they sit trying to come up with that money," Heiss said.

Between April 2020 and July 2021, the number of pretrial detentions — jail stays before someone is convicted — rose by 39%, the data shows. Jail population steadily increased over the past decade, from 25,594 in 2007 to 31,880 in 2019, according to the data.

Between 2011 and 2021, the state has seen 27 new local jails or major expansions of detention facilities, according to Jim Hart with University of Tennessee's County Technical Assistance Service.

"We seem to be going in the opposite direction of what's happening in a lot of places," said David Connor with the Tennessee County Services Association. "We are spending more on these people than we are on children."

Reformers push for custom risk assessment, call for hardened enforcement on bond agencies

Hart said the state should develop an assessment tool that allows judges to make individualized decisions on the risk of each defendant returning to society prior to trial.

"The risk assessments are a great tool to assist in providing some information to help make those decisions of release," he said.

Willie Santana, a law professor at Lincoln Memorial University, said the law needs to explicitly spell out the expectation that cash bail shouldn't be the default. Courts also need to help defendants schedule their bail hearing in an expedited fashion and streamline the process for them to appeal a judge's decision, he said.

Tennessee's 9th Judicial District Attorney General Russell Johnson on Monday pushed for heightened scrutiny over bond agents. The proliferation of

private bond companies have led to increased competition and decreased services to defendants, he previously told Knoxville News

The courts could develop a three-strikes-out policy for unscrupulous agents to penalize bad actors, he said. He also recommended requiring bondsmen to sign a form pledging honest conduct, which could be held against them if they violate the law.

Opponents: status quo is effective

But opponents, including representatives from the bail industry, cautioned lawmakers that a diluted cash bail system could lead to job loss and criminals on the loose.

Chris Craft, a criminal court judge in Shelby County, deemed responsible bail bondsmen "the best friends" of the criminal justice system. The liability of ensuring court appearances could be shifted onto local governments without them, he said.

"If we didn't have bail bond companies, we would have to keep a lot of these people in jail," Craft said.

Verna Wyatt, representing Tennessee Voices for Victims, named dozens of defendants who committed crimes after being released on bond. Bail reform, she said, is a liberal talking point drummed up in cities such as New York and Chicago, that are now "terrorized" by low-level offenses.

Kansas state Rep. Stephen Owens, R-Hesston, opposed the argument the bail system requires reform because it unfairly burdens indigent people. As long as state lawmakers "get a grip" on substance abuse and mental health services, incarceration will be reduced, he said.

Owens is a bail bondsman with his own company, Owens Bonding Co., based in Wichita, Kansas. He said Tuesday people are in jail mostly because "they need to be."

"(Reform advocates) want you to believe that the true victim here is the ones who are arrested," Owens said. "That's not true."

Others warned a loosened bail system could let offenders run rampant. Jeffrey Clayton, executive director of trade group American Bail Coalition, said judges should focus on each defendant's likelihood to commit a crime instead of ability to pay when setting the bail. He disputed the effectiveness of any risk assessment tool, and urged lawmakers to keep judges' authority to set bail.

"Just because they are committing a shoplifting today doesn't mean they are nonviolent offenders," he said. "The reality is, judges think they should (be in jail). And in this room, if we say they shouldn't, we are overruling the inherent power of the judiciary."

Haile: No elimination of cash bail or bail bond industry

Haile on Monday said he does not seek to regulate the cash bail amount and will leave the judge's authority over bail setting intact.

But he said he does think there should be more regulations over bail bond companies to eliminate bad actors — a sentiment shared by some of his colleagues during the hearing.

"I think there are just some minimal standards, that in any profession, need to be there," Haile said Tuesday. "But we want judges to retain that authority (of setting bail)."

Haile said he also appreciates Johnson's idea to require a form signed by bond agents.

House Majority Leader William Lamberth, R-Portland, said local judges instead of the state should be the ones holding bondsmen accountable. The state can, however, work to educate bondsmen on professional conduct, he suggested.

Lamberth also said he is in favor of utilizing more technology, such as ankle monitors, instead of or in conjunction with incarceration, to keep people in the community.

"It's significantly more affordable to do this, and at the same time, I think there are circumstances where it could actually be safer for the community," he said.

House Democratic Caucus Chairman Vincent Dixie, D-Nashville, agrees judges need to apply a higher bar for bondsman to enter the industry, but he does not see an alternative to the current cash bail system. Dixie owns Bail U Out Bonding, a bonds company in Nashville.

"We need to look at the individual case (when deciding bail)," he said. "(Cash resort) is the last resort. If you eliminate that, you are taking the tool out of the toolbox."

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TOP STORY

Public safety remains high concern with Tennessee bail reform options

By Jon Styf | The Center Square
Sep 17, 2021



Shutterstock photo

(The Center Square) – A suitcase of marijuana, drunk driving, car burglary, a high-speed chase, murder and prostitution were some of the issues discussed during more

than nine hours of testimony this week in front of Tennessee's Joint Senate Judiciary and House Criminal Justice Committee to Study Bail Reform.

Much of the **early testimony** centered on data and costs regarding how those accused of misdemeanors and felonies are handled in the pretrial process.

Second-day of testimony, as bail bondsmen appeared before the committee, focused on the public safety costs of increasing pretrial misdemeanor releases, including using statistical matrixes to determine whether a defendant should be released on a signature or cash bond.

Nashville bail bondsman Mario Hambrick detailed what he has seen in recent years, telling stories of how defendants are arrested, brought to the station and almost immediately released regardless of mitigating factors.

"You guys are the elected officials and we appreciated you," Hambrick said. "But we must, you guys must, stand up and put a stop to this."

Hambrick detailed a man from Washington, D.C., flying into Nashville with a suitcase of marijuana to pay fees because he was on probation and then getting a pretrial release and leaving the state. During the Music City Grand Prix weekend, Hambrick said a man from Hawaii was arrested for driving under the influence and released quickly.

Hambrick also spoke of a corner in Nashville where prostitution openly occurs and the police don't attempt to stop it.

Hambrick said men get off the train, break into around 20 cars and "every now and then" they get caught. The defendant then says he is homeless and is released and "he's off to the next city on the train," Hambrick said.

"Warrants are out of control," Hambrick said. "You can call (police) for assistance in any county, and you will not get assistance because they do not care."

Committee member and state Rep. Bud Hulse, R-Kingsport, detailed a case where a defendant was released from Knox County on charges of promoting prostitution,

according to the **Johnson City Press**, before allegedly driving to Sullivan County and shooting and killing a woman he previously dated before cutting off his ankle bracelet and fleeing to New Orleans, where he was arrested.

The man since was charged with first-degree murder, vandalism of a monitoring device and vandalism, and he was brought back to the state from New Orleans.

“To me, the talk about a matrix does not work,” Hulse said, noting the man was released in Knox County based on a pretrial release matrix.

Nick DeBord, who formerly worked at the Knox County Sheriff’s Office but now is a private bail bondsman and vice president of the Tennessee Bail Agency, said very few Knox County officers are available to go out on warrants and find defendants. He said the warrant unit serves about one or two warrants per day while Knox County issues about 100 warrants daily and each officer has 1,000 warrants assigned to him or her.

“Prior to the pretrial release program, Knox County averaged 13,000 active criminal warrants on any given day,” DeBord said. “That number has grown significantly with pretrial release where essentially there is no incentive for the defendant to show up to court.”

Kansas state Rep. Stephen Owens, who owns a bail bonding company in Kansas, said a **study by the University of Texas** showed the average cost to the state each time a defendant failed to appear in court was \$1,775.

“Rather than that cost being shifted to the community and the victims that have been perpetrated by the alleged charge,” Tennessee state Rep. Bruce Griffey, R-Paris, said. “... We are going to shift that cost to the community if they don’t show up.”

Owens called many bail reform and pretrial release programs an “end around to defunding the police” and said a key component of a conservative approach to criminal justice reform was focusing on treatment for mental health and addiction.

“If we could get a grip on addiction and we could get a grip on mental health, nothing would be more effective as lowering the incarceration rates in our jail system,” Owens said.

Any effective system with private bail bond companies means more defendants show up for court and the public remains safer, Owens said, a concern raised by many of those who testified.

“Folks want to strengthen the bail system,” Jeff Clayton of the American Bail Coalition said. “In other words, they are concerned that too many violent repeat offenders are getting out, on bail, and not being detained pending trial ... particularly gun offenses.”

Jon Styf
Staff Reporter

Jon Styf is an award-winning editor and reporter who has worked in Illinois, Texas, Wisconsin, Florida and Michigan in local newsrooms over the past 20 years, working for Shaw Media, Hearst and several other companies.

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Legislators put bail bond industry under the microscope

BY: [SAM STOCKARD](#) - SEPTEMBER 15, 2021 5:01 AM



(Photo: Getty Images)

West Tennessee bail bond agent Shelly Alexander wept Tuesday as she told lawmakers how she once refused to bail her daughter out of jail for a meth arrest.

Alexander knew her daughter had a “habit” and would go right back to debilitating drugs if she bailed her out. In fact, she told other bail agents not to write bonds for her child.



📷 Shelly Alexander (Photo: Professional Bail Agents of the United States)

Years later, Alexander's 11-year-old grandson told her, "You saved my mama's life."

A representative of the Tennessee Association of Professional Bail Bond Agents, Alexander put a human face on the bail bond industry that grabbed the attention of lawmakers studying bail bond legislation.

Not only does she write bonds enabling people to get out of jail, Alexander is an addiction advocate who assesses her clients and tries to turn them in the right direction.

"We're not just bondsmen, we're neighbors, we're your support system," she said. "We're the ones who run down people who run when officers don't have the time."

Tennessee lawmakers put the bail bond industry on the defensive this week, forcing it to stand up against reform legislation that could license agents and change the way bonds are handled.

Testimony by Verna Wyatt, co-founder of Tennessee Voices for Victims, also resonated with legislators as she told them how her sister-in-law was kidnapped and raped by a person out on bail.

We're not just bondsmen, we're neighbors, we're your support system. We're the ones who run down people who run when officers don't have the time.

– Shelly Alexander, Tennessee Association of Professional Bail Bond Agents

"I'm terrified Tennessee will start no-bail, low-bail" programs, which are "terrorizing" cities such as Chicago and New York. "We need plain, simple justice," she said.

Legislators and those testifying agreed that there are some "bad actors" in the bail bond industry, possibly 5%. But they also acknowledged without bail

bond agents, the criminal justice system would struggle more than it already does.

The House Criminal Justice/Senate Judiciary Joint Committee to Study Bail Reform dove into the complex subject based on two bills sponsored by Rep. Michael Curcio, R-Dickson, and Sen. Ferrell Haile, R-Gallatin, Senate Bills 804 and 805.

“It’s not my intent to abolish the bail bond industry. I think it serves a vital role in our justice system,” Haile said Monday. But he argued it needs better accountability and education and more professionalism.

He noted people shouldn’t be penalized because they’re poor. At the same time, though, he said discounting bonds and letting people out of jail after three DUIs needs to end.

It's not my intent to abolish the bail bond industry. I think it serves a vital role in our justice system.

– Sen. Ferrell Haile, R-Gallatin

The legislation could spur changes in the industry, potentially requiring agents to be licensed by the state and enabling clerks to collect bail of \$7,500 or less directly from defendants instead of bringing bail bond agents into the equation. In addition, it could set guidelines for defendants charged with low-level offenses to be released on their own recognizance or with some conditions rather than being bonded out.

But after eight hours of hearings, it appears current laws are likely to see only a tweak with the bail bond industry proposing ideas likely to be handed to Haile and Curcio for consideration in the 2022 legislative session.

“I think we tighten some things, hone some things out of this,” Curcio said afterward.



Rep. Vincent Dixie, chair of the House Democratic Caucus, owns Bail U Out Bonding. (Photo: John Partipilo)

Educating judges and magistrates about pretrial release, conditions and setting bond could be the most important idea to come out of the hearings, he said.

Curcio also said legislation is likely to set standards for bail bond agents to make sure “criminals aren’t monitoring criminals.” Lawmakers heard discussion about one case in which bail bondsman would write a man’s bond only if the defendant’s girlfriend agreed to have sex in exchange.

Talk also focused on situations in which bond agents are taking a series of payments from defendants and gaining access to credit cards, instead of using a one-time cash payment to make their bail.

Bonding companies could be required to use TBI background checks and take fingerprints before hiring bonding agents to ensure they’re not criminals.

In addition, lawmakers heard from vendors of monitoring devices to find out the latest tools on the market for keeping track of defendants to make sure they show up at court on time and don’t flee the region.

The hearings pitted legislators of the same party and similar political views against each other. For instance, Rep. G.A. Hardaway, a Memphis Democrat who contends too often “you get the justice you can afford rather than the justice you deserve,” took a different view than Rep. Vincent Dixie, a Nashville Democrat who owns a bail bonding company and believes bonding agents play an integral role in the criminal justice system.

In more than eight hours of hearings, legislators took testimony from groups who believe the bail bonding industry should be brought under control and those who said the criminal justice system couldn’t live without it.

Much of the discussion also showed jails are filled with drug and alcohol addicts who are likely to commit offenses again because of their addictions.

Problems are exacerbated, as well, by the state's geography, with General Sessions judges in rural areas holding court only a few times each month, while judges in urban counties have dockets several times a week. Some highly-populated counties hold jail hearings more than once a week to expedite pretrial decisions.

Even Davidson County General Sessions Judge Lynda Jones, who testified in favor of the legislation, struck a bit of balance in the debate, saying defendants' constitutional rights must be weighed against public safety.

"Good laws are in place," Jones said. "Instead of talking about reform, a better word is refine. We want to refine the laws we have." That means making sure judges and county court clerks apply laws equally, she said.

Judges, who are supposed to have the final say over bond amounts, already use a number of factors to determine whether a person should be released on bail and the amount to ensure they show up at court hearings until their case concludes. Those include employment, length of time in a community, family ties and relationships, mental condition and criminal records. The nature of the offense also plays a role in the decision.

In Tennessee, defendants can be released before trial on any charge except a capital offense.

Setting monetary bail is a "final resort," Jones said, noting, "Liberty has got to be tantamount." In other words, bail can't be set so high that people who could be released are trapped in jail before their guilt or innocence is decided.

Jones argued that payment plans are a "bad idea" because they hold the potential for abuse, enabling bonding agents to set up a plan that traps defendants.

Bail bond agents typically collect up to 10% of a bond, but they can take lower amounts, according to testimony. At least one person testifying said defendants are selling stolen items just to raise the money to pay bail agents.

Amid complaints about “bad actors” who use unscrupulous practices, Dixie defended the industry on the whole, noting most agents use weekly check-ins to make sure their clients show up for court hearings.

“The bail bonding company has a vested interest in getting that client there,” Rep. Dixie said.

If defendants skip town, agents are responsible for tracking them down and bringing them to justice. Otherwise, they’ll have to pay the full bond amount.

Jenna Bottler, with Justice Action Network, told lawmakers public safety “has to be the crux of the conversation.”

Yet she also showed a correlation between lengthy pretrial detention and recidivism. Defendants who stay in jail for 31 days have a 74% chance of committing another crime, compared to those who spend only two to three days in jail before trial who have a 39% chance of offending again.

Bottler agreed with Dixie that algorithms used to determine bail amounts can be “inherently biased” but said they could be used in a “broader context.” Dixie pointed out those types of formulas ask questions about people’s address and their parents’ background, which could be used against them to set a higher bail.

Bail bonding is a complex issue, which some say adds punishment to those who can’t afford to pay bail, and others, including Jenna Bottler with Justice Action Network, said there’s a correlation between length of time spent in jail and recidivism.

Vera Institute for Justice contends the state’s money bail system needs reform. The organization, represented by Jasmine Heiss at the hearing, says

state law passed in 1978 is supposed to affirm the “presumption of non-monetary release.”

“However, in Tennessee and across the country, money bail has increasingly become a default – and when bond amounts are set at amounts that are too high for poor defendants to pay, it undermines the Tennessee Constitution and the presumption of innocence,” she said in a statement.

Heiss said limiting the role of money “as a determinant of release” should be one of the main parts of pretrial reform. Short of eliminating money bonds for some low-level charges, though, the Legislature should strengthen existing law to allow people to be released, determine whether they can afford to pay bail and expedite bail hearings.

In addition, the group contends money bonds should be used only for cases in which “serious community safety” is in question.

Ultimately, legislators on the committee seemed more inclined to keep dangerous criminals in jail instead of letting them out until their court dates.

Jeffrey Clayton of the American Bail Coalition told legislators Tuesday risk assessment tools are “going by the wayside.” He encouraged Tennessee to adopt a two-day maximum for pretrial hearings, which Florida uses, to determine whether a defendant should be released on his own recognizance or bail.

“The swiftness of the punishment is the most effective tool we have,” he said.



Odd Statements, Twists, Turns Punctuate Bail Reform Hearing

The hearings were largely pro-industry affairs with a lock-'em-up philosophy.



Credit: Tennessee General Assembly

[Toby Sells](#)

12:45 p.m. Sep. 15, 2021

Sacramento now smells like “smoke and homeless people” and, perhaps, we should “cull” the 5 percent of society “that give the other 95 percent a bad name.”

These were but two public statements from key witnesses in a four-hour hearing on state bail reform in Nashville Tuesday. Neither of these statements brought public repudiation from any House or Senate member in the room.

A joint session of House and Senate member of the Tennessee General Assembly convened Monday and concluded Tuesday to hear from a long slate of witnesses on bail reform in Tennessee.

The panel heard from bail bondsmen, heads of professional bail organizations, companies that work on monitoring technology, sheriffs, judges, district attorneys, legislators who have worked on bail issues in other states, local elected officials from across the state, and at least one national organization looking to reform the money bail system altogether.

But the two days of hearings were largely pro-industry affairs with a conservative-leaning, lock-'em-up, tough-on-crime philosophy. Many seemed interested in nitty-gritty topics like bracelet-monitoring tech and sharing stories about locals cops letting someone go on bond only to make trouble again. Few, it seemed, were interested in an overhaul of the money bail system itself that, largely, allows those with money to walk free until their trial and those without money to sit in jail.

The hearings came with many surprise statements from witnesses, many probably used to speaking from the heart, not in public, and not before a legislative panel. It also had surprise moments from some lawmakers, too.

Tuesday's first witness was Jeff Clayton, executive director of the American Bail Coalition. He told the group he'd traveled the country talking about bail reform.

"Last week, I spent in lovely Sacramento, California, which smelled like smoke and homeless people," Clayton said, apparently in reference to recent wildfires there and the city's homeless population.

Again, not a single legislator spoke a word against this insulting remark, including Sen. Mike Bell (R-Riceville) who presided over the hearing.

Gardening, specifically pests in a cucumber patch, was on the mind of Memphis-based Ernie Arredondo, president of the West Tennessee executive board of the Tennessee Association of Professional Bail Agents, as he thought about criminals. In a bit of rambling testimony, he also suggested, maybe, getting rid of a chunk of society.

"It is just always a few things that will spoil your whole crop," Arredondo told the panel. "If you don't get the beetle bugs out of your cucumbers or where your squash is, they'll eat up all your plants and kill it.

"Let's say 95 percent of people are doing well. We just need to find a way to cull the other [3 percent, 4 percent, or 5 percent] that give the other 95 a bad name."

Kansas state Rep. Stephen Owens was past his prepared testimony and well into question time before Bell, with obvious anger in his voice, reprimanded him.

“It almost cast a cloud on your testimony that you didn’t start out with, “I’m vice president of the bail bondsman association of Kansas. That I make my money in the bail business and I make my money in the monitoring business,” Bell told Owens. “If chairman [Rep. Michael Curcio (R-Dickson)] hadn’t look it up online, we would have never known that.

“You come back before this committee again, at least in the Senate, I want you to lead with that before you say anything else.”

Owens explained that he gave up his position with the association when he was elected but admitted he was in the bail industry.

Look for even more surprising, silly, and strange moments, in our [YouTube video](#).

Jim Merritt: Legislative scrutiny of bail funds an urgent matter in Indiana

October 1, 2021 | Jim Merritt / Special to IBJ



JIM MERRITT
VIEWPOINT

With its roots in communities joining to assist in obtaining the release of loved ones from jail pending trial, bail funds have mutated over time into not-for-profit businesses. Ostensibly, “charitable bail funds” serve to post bail for indigent non-violent offenders. However, this lofty goal has been rendered all but irrelevant as courts have started releasing such individuals on their own recognizance.

Following the arrests of peaceful protestors across the nation in the summer of 2020 after the murder of George Floyd, bail fund operators received millions of dollars in donations to bail them out. Ultimately, the money was never needed because judges released nearly all the protestors, either on a promise to appear or a low cash bond.

Scrambling to justify their existence and flush with cash, bail funds focused on the release of violent felony defendants. Their justification was simple: Pretrial incarceration is cruel, no matter the criminal charges.

The Bail Project in Indianapolis made headlines recently for bailing out Marcus Garvin, who was arrested after stabbing a man at a gas station because he took too long in the bathroom.

Garvin’s bail was set at \$30,000, which initially kept him in jail, as no family members or friends stepped forward to bond him out. He remained in jail for 10 days before Judge Shatrese Flowers inexplicably reduced his bail to \$1,500. The Bail Project posted the

cash bail for Garvin and he was released. A short time later, Garvin was arrested for murdering his girlfriend and dismembering her body.

The Bail Project received approximately \$150,000 the past two years from the Violent Crime Prevention Grants Program via the Indianapolis City-County Council. Incredibly, Marion County taxpayer dollars were used to bail out Garvin.

In Indiana and throughout the nation, bail funds are unregulated, unlicensed and without legal authority to apprehend and return to custody defendants who fail to appear for court. The only exceptions at the moment are New York, which passed regulations some years ago to limit bail funds to misdemeanor-only cases, and Texas, which last month passed legislation to regulate bail funds. Otherwise, the organizations are free to post bail using other people's money—putting violent felony offenders back on the street without the ability to return them to jail if they violate their conditions of release.

Indiana needs to follow the lead of New York and Texas, both of which learned that regulation of bail funds was necessary after seeing violent crime explode. Our Legislature made a move to fix this threat to public safety earlier this year, but House Bill 1376 failed to gain traction. It would have placed a regulatory framework around charitable bail organizations and limited them to posting bail for misdemeanor violations only.

The Interim Study Committee on Corrections and Criminal Code should revisit this issue immediately to determine if regulation is warranted. It should be abundantly clear that legislative oversight be required when taxpayer money is used to bail out violent felony defendants. Hoosiers deserve to be protected from the misguided intentions of charitable bail funds that do not serve their best interests. •

Merritt is a former Republican state senator from Indianapolis.



LOCAL//CRIME

As Harris County judges take heat for felony bonds, critics point to unnoticed culprit: The bondsmen



Marie D. De Jesús, Houston Chronicle / Staff photographer

NICOLE HENSLEY, SAMANTHA KETTERER, STAFF WRITERS

Oct. 14, 2021

Judges set bail, but it's the bondsmen who decide how much a defendant pays to get out of jail.

The long-held 10 percent standard — with defendants or their loved ones paying a tenth of the bail amount to a private company — is not gospel anymore in Harris County and likely never was. People have been securing their release from jail on lower fees for years, according to county data and bail agents.

Bondsmen recently have been accepting lower-percentage fees on an increasing number of violent felonies. The discount makes it clear that judges are not always determining what people have to pay to get out of jail, and the implications for defendants, victims and the system are far-reaching.

“That means the cash bond system itself is serving a danger to the community,” state District Judge Chris Morton said. “Any time there’s a for-profit aspect to criminal justice, that creates the opportunity for oppression and inconsistencies in justice.”

Bail in Harris County

Bail is the money a defendant must pay in order to get out of jail. A bond is posted on a defendant’s behalf, usually by a bail bond company, to secure his or her release. Such a surety bond is like a security deposit.

Bail is not intended as a punishment. It is rather a way of securing a defendant’s agreement to abide by certain conditions and return to court. The standard for bail in most jurisdictions — and other states — is that a bail agent requires 10 percent of the bail amount plus collateral to secure a defendant’s freedom. In Harris County, bail companies rarely pay in full and give the court an equivalent of a provisional IOU with the backing of insurance agencies, said County Court at Law No. 8 Judge Franklin Bynum.

If a defendant skips court, prosecutors can move to revoke or forfeit the defendant’s bond. Revocations trigger an arrest warrant and their return to court upon their capture. Forfeitures are a more tedious process that results in the court keeping the bail amount — but only after a judge agrees and prosecutors successfully sue to seize the money.

In Texas, the 10 percent figure is referenced in Texas Insurance Code, which states that payments above that amount could be subject to regulations. No minimum is required.



The Harris County Jail along Buffalo Bayou just east of Main Street, Tuesday, Oct. 12, 2021, in Houston.

Mark Mulligan, Houston Chronicle / Staff photographer

Shrinking industry

Loose regulations set the stage for variations in how bail companies collect money, according to several professors who study bail. And changes in the market are usually the cause.

Profits diminished for bail companies after Harris County began adopting bail reform in 2017, requiring cash-free releases for most poor misdemeanor defendants. Bail licenses in Harris County have dropped by nearly two dozen since 2017, with about 80 permitted as of September to operate, records show.

One estimate from monitors tracking the implementation of bail reform indicated that bail bond earnings in Harris County went from around \$3.5 million in 2015 to slightly over \$500,000 in 2019.

The dwindling bail landscape caused agents to adapt or close up shop. Many padded their business with felony cases, some carrying higher bonds and more risk of defendants skipping court. Some bail agents are relying more on payment plans and are not asking for collateral — a house, car or other possession.

The Houston Chronicle reviewed hundreds of court records and found that bail bondsmen for years have been granting less than 10 percent rates on surety bonds. A sampling of data for the first six months of 2021 supported bondsmen, defense attorney and judges' anecdotes that bail agents are more frequently charging lower fees, sometimes as small as 1 or 2 percent, at times on more violent crimes. Some of the defendants are then put on payment plans for the remainder of the money.

"We're business people," said Michael Kubosh, an at-large city councilman and former bondsman. "You collect what you can."

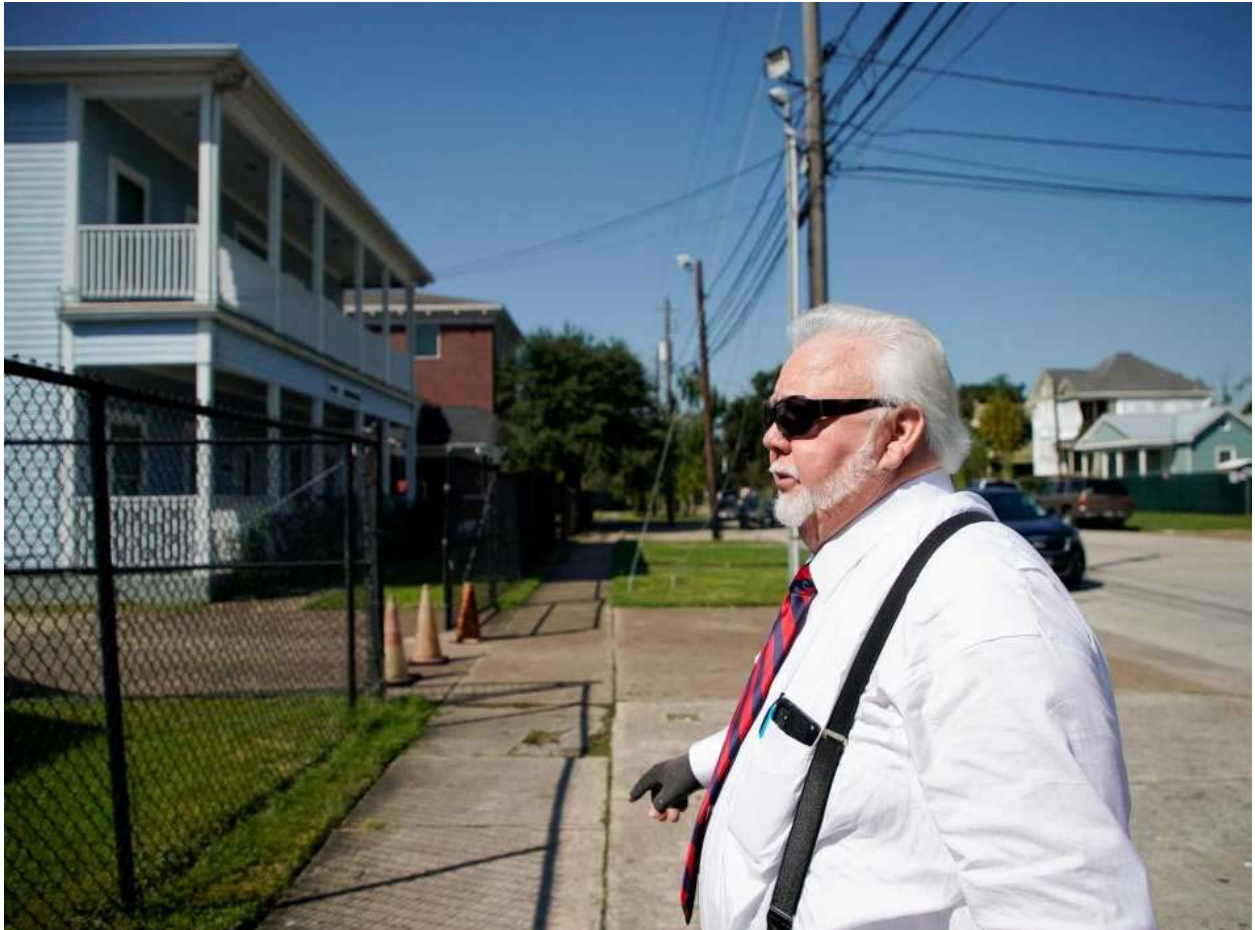
While seemingly better for defendants, the lower fees are concerning to lawyers and jurists. Several judges worry that they no longer can count on defendants paying 10 percent for their pretrial release; others feel that even at lower rates, bail is still too much for some.

Authorities believe some defendants have committed more crime to pay bail for themselves and others, according to court records.

Jose Luis Perez — on bond for a prior offense — was charged in March with robbing a woman at gunpoint; he told officers he needed cash to pay for the bail, meaning he was likely on a payment plan, prosecutors said. He faced additional charges in federal court, and the state case was later dismissed.

Prosecutors say that the lower payments also minimize the pressure to return to court, because more money down means defendants would feel beholden to family members who put their livelihoods on the line to free them.

Advocates, meanwhile, do not believe any amount of cash bail keeps the public safe, and they feel bail discounts and payment plans show how many defendants — primarily poor people of color — remain on the hook with private enterprises after securing their freedom.



Councilman at-large Michael Kubosh walks over to his former old bail bonds office on Lubbock Street on Thursday, Oct. 7, 2021, in Houston. He recently left the bail bonds business after about three decades because of shrinking profits.

Godofredo A. Vásquez, Houston Chronicle / Staff photographer

How discounted bail works

A magistrate set bail for Zacchaeus Gaston at \$50,000 in February 2020 on a drug possession charge. The general assumption is that Gaston, his loved ones or another benefactor would pay 10 percent, or \$5,000, to a bail agent to get him out of jail ahead of trial.

The payment, instead, was \$2,300, a bondsman listed in an affidavit of surety to surrender principal — a unique form that allows a bail agent to cut ties with a defendant's bond, usually after a new charge. In filing the form, bail agents ask deputies to take the defendant into custody, while they keep the defendant's bail deposit and stop being responsible for the person in the eyes of the court.

The bondsman filed the document for Gaston after Houston police accused him of fatally shooting his ex-girlfriend, Layla Steele, and wounding their 1-year-old boy.

Records outlining surrendered bail agreements are public, and the Chronicle reviewed more than 700 documents through the Harris County District Clerk's Office. This included filings made prior to misdemeanor bail reform, which resulted in the majority of defendants in low-level offenses not having to pay to get out of jail.

In those affidavits, the Chronicle found 141 cases of lower than 10 percent bonds for the first six months of 2021 — 31 of which were for violent felonies, according to court records. The number could be higher outside of the affidavit of surrender documents. The same span of time in 2013 produced at least 103 cases — 12 of which also were for violent crimes.

Some of those records reference the amounts left on payment plans. The extent of the payment plans and lower fees may never be known because bail companies are not obligated to enter their contracts into the public record.

Payment plans and lower fees are a point of contention for defense attorneys and advocates who oppose the bail industry. Those advocates worry that bail agents, who secure freedom for defendants deemed to be violent, operate without oversight and enable repeat offenders.

In most cases, the Texas Constitution guarantees a defendant's right to bail, which allows for pretrial release from jail upon the payment or promise that a defendant will return to court.

If the defendant is charged with a new crime while out on bond, the judge or magistrate usually sets bond for the new case, as the defendant still has right to bond in most cases. If the defendant is charged with yet another crime while out — an increasing occurrence amid a crisis-level backlog in the courts, which keeps cases languishing — the jurists come under fire for not keeping the person locked up.

Bail can be denied only after prosecutors file a motion and request a hearing, said state District Judge Kelli Johnson, who presides over the Harris County criminal district courts.

“What is most frustrating as a judge is to go through the whole process of a meaningful bail hearing and set an appropriate bond, only to have a bondsman come up behind you and accept a nominal amount of the bond and no collateral,” Johnson said.

Bondsmen are accountable to the court for the 100 percent surety, however, and that shouldn't be overlooked, said Jeffrey J. Clayton, executive director and policy director of the American Bail Coalition. Lowering bail fees is completely legal in most states (including Texas) in order to remain competitive — but legislatures have the ability to enforce a floor amount to those payments if needed.

Glenn Strickland, of A-1 Bail Bonding and the head of the Harris County Bail Bond Board — which approves licenses — disapproves of fees 4 percent or lower, adding that he has heard of their prevalence but not accepted them himself.

“Everyone charges what they think is appropriate,” Strickland said.

Payment plans, he said, stemmed from an increasing number of indigent defendants.

Strickland and others defended their businesses as a service to defendants, their families and taxpayers. Most bail agents remind defendants to show up for court.

The bail agents who spoke to the Chronicle were not among those who routinely offered lower than 10 percent fees, records show. The bail agents who appeared in court records to take lower fees most frequently declined to comment.



Board member Glenn Strickland during the first in-person meeting of the Bail Bondsman Board since March of 2020, at the Commissioner's Court Room at the Harris County Administration Building Wednesday, Sept. 8, 2021 in downtown Houston, TX.
Michael Wyke / Contributor

The issue of public safety

Bail bonds agents in Harris County opposed misdemeanor bail reform, filing to intervene in federal court. Although their efforts were futile, they heralded the idea that cash bond keeps the public safe by motivating defendants to return to court since their money or their family's money is on the line.

Some worry what that could mean when bail fees are lowered to the point of apparent ineffectiveness, but several defense attorneys and advocates said they feel the trend proves the opposite — that bail agents aren't considering public safety when they offer discounts to defendants with a history of violence.

Experts who study bail, as well as defense attorneys, added that research usually does not back the idea that bail is what keeps people coming back to court.

"The big bail industry has little accountability for bargaining away public safety," said Sarah Wood, general counsel for the Harris County Public Defender's Office. "Our money bail system is one big loophole where people are allowed to wheel and deal their way around court orders and then try to blame judges and reformers when things go wrong."

Morton, the state district judge, does not support the cash bail system but understands that is what Texas currently uses and what he is forced to work with. When judges have little or no ability to deny bail for a violent defendant, they set a higher bail amount knowing the suspect is unlikely to make bond. Discounts undercut that, he said.

On the other hand, advocates who push for the right to bail on behalf of poor defendants concede that a discount is technically better than a 10 percent rate. But they emphasized that all bail is oppressive.

“The alternative to unconstitutional pretrial detention is not saddling people and their families with huge amounts of debt and aggressive collection practices,” said Elizabeth Rossi, senior attorney at Civil Rights Corps, which successfully sued Harris County over misdemeanor bail and has sued over felony bail practices. “Both of those scenarios create immense harm, especially on poorer communities and Black and brown families.”

Lack of transparency, regulation

The bail bond industry is thought to be a \$2 billion enterprise in the U.S., one of only two countries — the Philippines is the other — that use private bail companies for a pretrial release system.

Transparency is one of the biggest issues facing the criminal justice system related to bail, according to professors who study the bail system.

“They are a private company, but they are part of this public system in that in a sense they literally hold the keys to the jail for many defendants,” said Joshua Page, an associate professor of sociology at the University of Minnesota, who also did research working as a bail agent in a large urban county. “When we don’t know how they operate, it’s difficult to hold them accountable.”

The Chronicle was not able to get a full accounting of how often defendants paid less than 10 percent to get out of jail or learn details of payment plans because bail companies are not obligated to enter their contracts into the public record. Only a sample of data was available through affidavits of surety to surrender principal — forms that allow a bail agent to cut ties with a defendant’s bond, usually after a new charge.

Estimated bail bond profits for misdemeanor cases dwindled between 2015 and 2019 in Harris County, according to a report from a group of independent monitors federally appointed to oversee the bail reform settlement.

Assuming defendants paid 10 percent of their bail amounts, bail agents took in \$3.6 million in cash in 2015, the report continued. By 2019, that intake was an estimated \$506,000.

That loss in income makes it easy to understand why bondsmen have lowered their rates, Page said. Basic rules of supply-and-demand dictate that fewer “clients” means lower costs are needed for “sellers” to stay competitive. Bail agents stand a chance to make more money — despite the lower fees — as

long as business increases. And violent felonies in Harris County have been on the rise.

“Our jail is full right now — and it has been for a while,” Sheriff Ed Gonzalez said. More than 9,200 people were being jailed as of Wednesday, records show.

The profile of people inside the Harris County Jail is shifting, he said, with more serious offenders being booked. However, plenty of defendants with bail set at \$10,000 or less remain jailed and unable to make bond.

“There’s plenty of clients to look at — but some people are just too poor to pay even that,” the sheriff continued.

Lowering rates would not be illegal, and part of that is because laws governing bail bonds industries are scant, said Lauryn Gouldin, a professor at the Syracuse University School of Law.

“The way the bail bonds industry has become a significant piece ... in jurisdictions is not really something I think of being anticipated in any laws anyway,” she said.

Judge Morton said he believes magistrates, who set initial bail amounts at probable cause hearings, are already setting those bonds higher than in previous years. But judges have to consider the defendant’s case independently from what bail agents might be doing, he said.

“It doesn’t make sense to set bond at \$30,000 because you think they might pay \$3,000,” Morton said. “Especially when you don’t have access to any of their (bail companies’) records.”

Regulating bail companies is possible in some jurisdictions, to an extent, Page said. Minnesota in 2016 required bail records to be audited by the surety company associated with each bail bond company and share those results with the state.

Jeffrey J. Clayton, executive director and policy director of the American Bail Coalition, said a minimum bail fee percentage is possible to enforce through state legislatures. A “floor” isn’t in place in most states, meaning bail agents can lower their rates as much as they feel they need to, Clayton said.

“Sometimes it does tilt the balance too far,” he said. “Jurisdictions should look at this, and where they come down on it is up to them.”

Texas this year proved that something could be done when lawmakers attempted to restrict the activities of charitable bail companies, which usually post bail on behalf of poor defendants, several advocates said. After pushback, the state instead wrote into law that charitable bail funds need to be classified as nonprofits and file reports on who they bond out of jail — something that could have been done for bail companies but was never broached, those advocates noted.

“The Legislature could have required transparency from everyone who posts bond, specifically the \$2 billion for-profit bail bond industry, but instead intentionally targeted charitable bail funds,” said Twyla Carter, national legal and policy director for the Bail Project, a charitable bail fund. “We should ask ourselves why.”

Strickland, of the Bail Bond Board, takes exception to the charitable bail groups — with one grievance that they’re not licensed like he and other bail agents.

“I think they’re out there competing just like we are,” Strickland said.

Written By
Nicole Hensley
Reach Nicole on

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Written By
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She joined the staff as a breaking news reporter in 2018 following a gig writing about tourism and Galveston City Hall for The Galveston County Daily News.

Samantha graduated from the University of Texas at Austin's School of Journalism and is a proud alumna of The Daily Texan. She was also a reporting fellow for the Dallas Morning News' state bureau.



[Crime](#)

News 8 sits down for a one-on-one interview with the San Diego District Attorney to address the rise in crime

Eric Kahnert sat down with Summer Stephan to address the rising crime in America's Finest City.



Author: Eric Kahnert (Anchor/Reporter)
Published: 9:57 AM PDT October 29, 2021
Updated: 10:12 AM PDT October 29, 2021

SAN DIEGO COUNTY, Calif. — San Diego is often touted as one of the safest cities in the United States. However, violent crime is up all around the county according to the latest crime reports.

News 8 sat down with San Diego District Attorney, Summer Stephan to find out what was behind the rise.

Stephan says she is very concerned about the violent crime rates going up. Those rates include the record rate of homicides the county has seen recently. She says San Diego County has not seen these kinds of homicide numbers in 20 years. Stephan added that the problems are a byproduct of many of the changes that went into place during COVID regarding the jail population.

For example, San Diego County along with many other counties are seeing the impact of zero bail which was launched at the beginning of the pandemic to keep jail populations lower. Stephan says 65 percent of offenders who are released on zero bail end up reoffending. "This is a high number of people committing crimes, and there's a certain percentage that are re-arrested, three, four, five, even up to ten times," said Stephan.

The full transcript of Eric's interview with Summer Stephan can be seen below.

What has your office seen when it comes to the stats? And are you concerned at all?

I am very concerned that we are seeing the violent crime data go up and crime data go up including DUI homicides that have gone up to a record that we haven't seen in 20 years. So in all areas, I am very, very concerned. In San Diego safety is a top priority to make sure that our children and seniors, businesses and people are safe. We are starting to see the pulling of the seams that is happening as a byproduct of a lot of things that went into place during COVID.

Tell us a little bit about the changes to how bail is handled in San Diego County. I know when the pandemic happened to deal with the jail populations and COVID, there was zero bail for certain level offenders. Then a new bail schedule was created. I mean, how is that impacting things?

Well, we are definitely seeing the impact of it. So first, we had zero bail that included some very serious offenses like human trafficking and elder abuse that came from the Supreme Court.

Initially, as a reaction to COVID, we actually went to court and we won a battle in court at the Fourth District Court of Appeal that allows a judge in special circumstances to not apply zero bail, then our county instituted on lower level not serious violent offenses, but lower-level offenses as zero bail. So not that expensive list that we first got from the Supreme Court. However, the numbers I'm tracking are still very disturbing. As an example, it looks like close to 65 percent, where we arrested after being released on zero bail, and of those that were re-arrested. Sixty-five percent were also re-arrested on a felony crime, not a smaller misdemeanor crime. So definitely there is a connection in that this is a high number of folks that are committing crimes, and then there is a certain percentage that are re-arrested and cycled through on zero bail, you know, three, four, five and even up to ten times. So we are seeing that tension and that pressure. This has to be balanced because public safety is imperative. We shouldn't be now at a point in time where we can return to what is a very just and fair system. We have a law of People vs. Humphreys that says that people cannot be held just because they can't pay bail, but the judge gets to look at everything, their criminal record their appearance, record the threat to the community. And if they shouldn't be released, then bail is set and they're not released.

What actions have you taken on the state level? Have you brought your frustrations to the state?

Oh, definitely. You know, I'm part of the lawsuit that stopped for now, the release of 70,000 more violent offenders into our streets. San Diego County being the second largest, we expected a sizable portion of them to be released. Fortunately, we were able to stop that. We also fought the zero bail that was expansive that included the felony crimes of human trafficking and elder abuse. We didn't think that those crimes should get on zero bail. We were able to get the court to agree that a judge gets to weigh in the battle continues. We need to be able to balance the safety and the health of the jail and keeping the numbers at a right amount working with the sheriff and the courts. But it seems to be out of balance now.

Politics & Government

House bill passes that could threaten to close Pennsylvania's community bail funds

90.5 WESA | By [Kiley Koscinski](#)

Published November 19, 2021 at 5:30 AM EST



Katie Blackley/90.5 WESA

A crowd holds up their hands during a demonstration against police brutality held by the group Black, Young and Educated on Saturday, June 6, 2020.

A bill that passed the Pennsylvania House this week could change how community bail funds operate and may force some of them to close. It would require anyone that pays bail for more than three individuals over the course of 30 days to be a licensed professional bail bondsman.

Most bail funds operate as nonprofits that collect donations from community members to free a person from jail before trial. Pennsylvania has eight bail funds across the state.

[A surge in donations to these funds happened during police brutality protests](#) across the nation in 2020. For months, bail funds were heavily focused on posting bail for protesters caught up in mass arrests that summer.

Bail funds serve as an alternative to bail bond companies, which charge an incarcerated person non-refundable fees in exchange for guaranteeing bail to the court, allowing the incarcerated person to be free while awaiting trial.

When an individual returns for their court proceedings, the bail bond company keeps that fee for profit.

Bail funds put up the costs without charging a fee and often provide other services, like a ride to court, to ensure the person meets their bail obligations. When an individual appears in court, the fund receives that money back to use for the next person.

Pennsylvania bail funds are speaking out against the bill, saying it would not only affect their work but the work of other community groups and churches working to help incarcerated individuals achieve pretrial release.

“It attacks the concept of communities being able to band together,” said Alex Domingos, board member of the Dauphin County Bail Fund. “Paying bail is already such an onerous process with a lot of regulations. We fear that any additional regulations or barriers ... would result in more people being incarcerated pretrial.”

'Harder to bail people out'

[House Bill 2046](#) holds bail funds to the same requirements as any professional bondsmen in the state.

“This would make it harder to bail people out,” said Nyssa Taylor, criminal justice policy counsel for the American Civil Liberties Union of Pennsylvania.

Bail fund organizers point out that the bill would also hold churches and other community groups to the same professional standards.

“It’s going to preclude church groups or families who are pooling together resources to put together that money order or cashier’s check for an egregiously high bail,” said Milica Bogetic, an organizer with the Bukit Bail Fund of Pittsburgh. “It’s really not about bail funds only. It’s more about [how the bill] is restricting the freedom to do this.”

Bail funds or groups who regularly bail out community members would have to meet the following requirements.

- Obtain a license from the state Insurance Department, which requires a \$125 application fee and approval from the local district attorney
- Pass a criminal background check
- Pass a credit background check
- Maintain an office in the county in which a bail fund operates

That last requirement would complicate the way bail funds collaborate with each other and serve people in neighboring counties. Four of Pennsylvania’s eight bail funds are in the Philadelphia area. The other four are in Allegheny, Dauphin, Lancaster and Montgomery counties.

The Bukit Bail Fund of Pittsburgh frequently serves people incarcerated at the Allegheny County Jail, Bogetic said, but they also work with people in neighboring counties.

“We very regularly get requests from Butler, from Mercer [and from] Indiana [counties],” she said.

Requiring the group's members to pass a criminal background check would keep formerly incarcerated people from organizing bail funds. Many use their experience with the legal system once they're free, according to Taylor.

That's "precisely why they become activists and choose to help," she said. "Requiring them to have a clean criminal record...would prevent them from helping people."

A party-line vote

The bill flew through the House, passing mostly along party lines two weeks after it was introduced by state Rep. Kate Klunk (R-York). Klunk declined WESA's multiple requests for an interview about the legislation.

During a House Judiciary Committee meeting last week, state Rep. Emily Kinkead (D-Allegheny) asked Klunk for examples of bail funds freeing people who commit crimes while on bail or those who refused to show up for their court date.

"This could happen. I don't have a particular instance right off the top of my head to give you," Klunk answered. "You could certainly see somebody skipping out. You could see another crime being committed."

Klunk admitted that bail funds could operate altruistically, but she argued that without a license they can't be held accountable for releasing someone who commits another crime while on bail.

"Because that person doesn't have that professional experience in this, it could potentially create problems, jeopardize public safety and security in our communities," she said.

During the hearing, Klunk and other supporters of the bill did not cite data showing that bail funds are responsible for freeing repeat offenders.

"There were no known instances where community bail funds were having a problem or [something] that would've prompted this sudden need to professionalize community bail funds," Kinkead said. "This is a solution looking for a problem."

During the same committee hearing, state Rep. Paul Schemel (R-Franklin), suggested the bill also protects bail funds from being used by drug cartels.

"This is a good solution to a problem," he said.

Kinkead argued that cartel members are often held on bonds too high for community bail funds to achieve.

Bail fund advocates question whether bail bond industry itself is behind the bill.

[Citing a report from The Pennsylvania Capital-Star](#), Taylor pointed to donations made to Republican campaigns by lobbyists with ties to bail bond companies.

"I think what [we're] seeing is large corporations and greed ... using this as a way to put [bail funds] out of business," said Taylor. "The bail bond industry is losing money to bail funds."

Reggie Shuford, executive director of the ACLU of Pennsylvania, said the bill would disproportionately harm people of color.

"Pretrial detention can ruin lives, and it is often only the work of community bail funds that prevents people who cannot afford bail from having their lives ruined before they've ever been convicted of a crime, particularly Black and brown people," said Shuford.

What's next?

The bill now moves to the state Senate for consideration.

A spokesperson for the Wolf administration said the governor opposes the legislation “in its current form.”

“[The bill] would create barriers for community organizations that provide support to Pennsylvanians who can’t afford cash bail, which itself is regressive and disproportionately impacts minority populations,” the spokesperson said.



#

Kiley Koscinski

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News

Biden Administration Pushes Progressive Bail Reform Despite Parade Massacre



By [Andrew Jose](#) November 24, 2021 at 2:19pm

The Biden Administration stands by seeking to bring an end to cash bail, arguing that whether or not to keep defendants in custody should be something determined by the danger the defendant poses to the community and not by their ability to pay bail.

The [White House](#) is sticking by this policy goal at a time when the nation faces debates on bail policies — rising from the [Waukesha, Wisconsin Christmas parade crash](#) where 39-year-old Darrell Brooks Jr. allegedly rammed his vehicle through a group of innocent people who were taking part in the parade, [Fox News](#) reported.

With a vast criminal history going back to 1999, and including several felonies, Brooks, a convicted sex offender, made bail twice in Wisconsin in 2021, even though he was wanted in Nevada for jumping bail on a sex crime charge, according to the outlet.

Most recently, in early November, according to Fox, prosecutors in [Milwaukee](#) merely asked bail to be set for \$1,000 for Brooks after he punched his girlfriend in the face and ran over her with his vehicle in a gas station's parking lot.

On afterthought, the prosecutors consider the bail to have been “inappropriately low,” the outlet reported.

The [low bail](#) amount also drew criticism from several others.

“These extremely liberal prosecutors who want to talk about restorative justice, and what that means is, is that we are putting the public in danger by trying to give these people too many opportunities to re-offend,” retired police sergeant and National Police Association spokeswoman Betsy Brantner told [Fox](#).

“It’s incredibly frustrating for law enforcement, and it’s just absolutely dangerous for our communities.”

It is in this context that the Biden White House has signaled that it would stand by its desire to see the end of cash bail.

According to Politifact's [Biden Promise Tracker](#), one promise President Joe Biden made when running for president was that he will "will lead a national effort to end cash bail and reform our pretrial system."

Biden also promised to "establish a technical assistance program to help state and local jurisdictions transition to a fair, equitable and effective pretrial system that does not rely on cash bail."

The [Biden campaign](#) called cash bail a "modern-day debtors' prison."

"The cash bail system incarcerates people who are presumed innocent. And, it disproportionately harms low-income individuals," the Biden campaign's website stated.

Biden's proposal to end the cash bail system, however, was criticized by several crime experts, according to a 2020 [Forbes](#) report.

"Biden and Harris are saying we're just going to ban it," American Bail Coalition expert Jeffrey Clayton told Forbes. "If a judge finds that there is a serious risk of re-offense and flight in an arson case and imposes a \$250,000 bail, that person will walk under the so-called 'cashless bail system.'"

"A judge can require all the electronic monitors he wants, but that person will not remain in jail pending trial even if they are a flight risk, danger to the community and are likely to obstruct the criminal justice process. In fact, most states are only able to deny bail in very limited circumstances — generally capital murder cases — thus nearly every criminal defendant is getting out for free under Biden's cashless bail system. Does anyone really think most Americans favor this?" Clayton added.

"Ending cash bail will not automatically put people charged with crimes on the streets," an unnamed White House official told Fox after the Waukesha tragedy, affirming the White House's support for the policy. "It just means that whether you get bail should be based on the threat you pose, and not how much money you have in your bank account."

"There shouldn't be a separate criminal justice system for wealthy Americans," the official stated.

[Andrew Jose](#)

Contributor, News

Andrew Jose is a journalist covering business and finance, foreign policy and the aviation industry, among other beats.

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Homicide suspect and accomplice's release widely criticized in South Bay

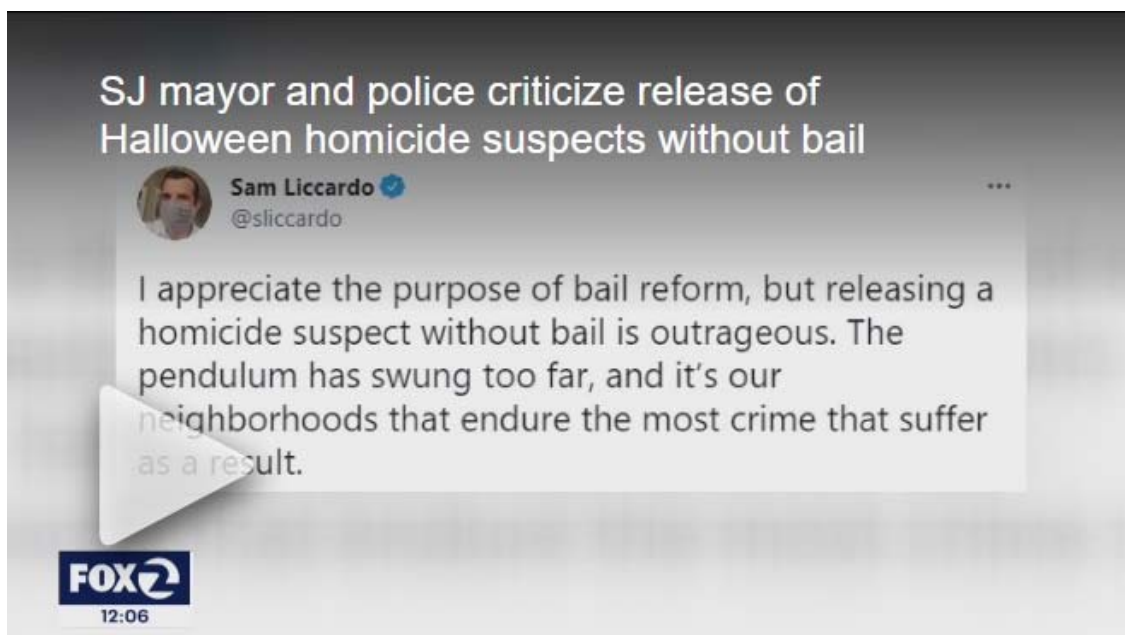
By KTVU staff

Published November 30, 2021 10:17PM

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Crime and Public Safety

KTVU FOX 2



SJ mayor and police criticize release of Halloween homicide suspects without bail

San Jose Mayor Sam Liccardo says the criminal justice system has failed in a homicide case despite a state Supreme Court case that ruled defendants can't be held solely on the basis of whether or not they can afford to pay bail even if they're charged with a homicide – and in this case, the defendants are arguing self defense.

SAN JOSE, Calif. - San Jose Mayor Sam Liccardo says the criminal justice system has failed in a homicide case despite a state Supreme Court case that ruled defendants can't be held solely on the basis of whether or not they can afford to pay bail even if they're charged with a homicide – and in this case, the defendants are arguing self defense.

Still, the mayor issued a statement Tuesday night condemning the Nov. 10 release of two homicide suspects without bail, the same day the police department criticized the move on social media causing a frenzy.

"I appreciate the purpose of bail reform, but releasing a homicide suspect without bail is outrageous. The pendulum has swung too far, and it's our neighborhoods that endure the most crime that suffer as a result," [Liccardo wrote](#).

San Jose police were also mad.

"Yes you read that correctly," [the media relations department tweeted](#). "Two homicide suspects, charged, out of custody. Our community deserves better, the victim's family deserve better. The taking of someone's life is the ultimate crime. The system has failed."

The case in question involves two men accused in a [deadly San Jose Halloween shooting](#).

Efrain Anzures, 27, and Alfred Castillo, 26, both of San Jose, were arrested earlier this month. Anzures was booked into county jail on suspicion of homicide while Castillo was booked on suspicion of assault with a deadly weapon and being an accessory to homicide, police said.

Ultimately, Santa Clara County Superior Court Judge Philip Pennypacker decided that Anzures can be released on home arrest with an ankle monitor and Castillo must appear in court on his own recognizance.

"I'm very surprised and disappointed and frankly just concerned for our community that these two individuals were released," said Santa Clara County District Attorney Jeff Rosen, who weighed in on Wednesday.

The [Mercury News](#) [cites](#) a criminal complaint identifying the person killed as Isiah Gonzalez.

Despite the public anger, Anzures' attorney, Renee Hessling, told KTVU on Wednesday that her client is innocent until proven guilty and criticized the police and mayor for turning the "Humphrey" court ruling into a political flashpoint.

Her client is not a danger to anyone, she said, emphasizing that he is currently a student and working to support his family.

"Why this has made all of a sudden a splash in the headlines, in my opinion, is due to the fact that police are upset Mr. Anzures is released, and they are upset generally about similar criminal justice reforms that are now affecting our system," she said.

"They [police] want every problem to be solved in one single way, which is, put

people in jail and throw away the key without taking into consideration any of the important factors about the individual."

She added: "For them to be outraged by the fact that he is allowed to continue living his law-abiding life, is just reflective of their overall opinion of criminal justice reform."

In an interview, Sean Pritchard, president of the San Jose Police Officer Association, said he does not support no-cash bail.

"This is just one example of many, throughout California and the country," he said. "Maybe they haven't done anything today but that's not to say they won't do something tomorrow. If that happens, then what? How do we explain that to the next victim?"

The San Jose POA is part of a national law enforcement group comprised of seven police unions that this week launched a website called "[ACLU Watch](#)," which is critical of the civil rights organization for protecting "some of the worst elements of our society."

While it has been rare to release homicide suspects on bail, as is standard in criminal cases, prosecutors often argue to keep defendants in jail at high bails and defense attorneys argue the opposite, typically providing the court with information such as their clients' work history and community involvement.

A judge then makes a decision on whether a defendant will be a flight risk or cause harm if released into the community as they await trial or other legal proceedings. A judge would also weigh whether the defendants had a prior criminal history, which Anzures did not.

Legal analyst Steven Clark told KTVU on Wednesday said that in this case, the judge looked at the underlying facts presented to him, which defense attorneys argued was a case of self defense. Anzures shot and killed a person whom his lawyer said was driving recklessly through his neighborhood when he started driving toward him when he fired his gun.

Rosen said a preliminary hearing will take place in 2022. He added, if the defendants violate conditions of their release, his office will go back to the court immediately to two men put back in custody.

A new high court ruling also most definitely played a key factor here, Clark said, where only defendants charged with capital murder can automatically be held without bail.

In March, [the California Supreme Court ruled that judges](#) must consider suspects' ability to pay when they set bail, essentially requiring that indigent defendants be freed unless they are deemed too dangerous to be released awaiting trial.

"The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional," the justices said in a unanimous decision.

Judges can require electronic monitoring, regular check-ins with authorities or order suspects to stay in shelters or undergo drug and alcohol treatment, Associate Justice Mariano-Florentino Cuéllar wrote on behalf of the court — conditions that "in many cases protect public and victim safety as well as assure the arrestee's appearance at trial."

However, "where a financial condition is nonetheless necessary, the court must consider the arrestee's ability to pay the stated amount of bail — and may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail."

The decision comes after voters in November rejected a state law that would have ended California's cash bail system entirely by substituting risk assessments for every suspect, and after months when a judicial order set bail at \$0 for lower-level offenses during the coronavirus pandemic. The court's ruling allows cash bail, so long as defendants can afford it.

There will be fewer bails set, and at lower levels, though he said the impact on the bail industry is uncertain. Also uncertain is the effect on public safety, American Bail Coalition Executive Director Jeff Clayton said, because prosecutors can still argue for detaining those they think are dangerous or likely to flee.

Bail is money or property that can be forfeited if suspects fail to appear for trial. Previously, judges set bail based on suspects' criminal records and pending charges. Critics said that let wealthy suspects go home to prepare for trial while lower-income defendants stayed locked up, a system they said encouraged some innocents to plead guilty to get out of jail.

The decision was hailed by reform groups, while the California District Attorneys Association didn't object and said prosecutors have long felt there should be thoughtful reform, including on the financial issue.

The high court's ruling came in the case of 66-year-old Kenneth Humphrey of San Francisco, who was jailed for more than eight months because he couldn't post \$350,000 bail on charges of stealing \$5 and a bottle of cologne from a neighbor in a senior housing complex in May 2017.

The Association of Deputy District Attorneys in Los Angeles County noted that Humphrey has a long criminal record and so faced a potentially long prison sentence on charges including robbery and residential burglary. He is alleged to have demanded money from a 79-year-old man who uses a walker, then followed the victim into his apartment where he stole the items.

But San Francisco Public Defender Mano Raju said after the ruling: "Pretrial liberty should be the norm and not the exception."

The Associated Press and KTVU's Lisa Fernandez contributed to this report.

Thursday, December 9, 2021

Charitable bail fund responsible for my son's death

POSTED BY: [THE REPORTER](#) DECEMBER 9, 2021

By NIKKI STERLING

Guest Column

The holiday season was approaching, and my family was just beginning to make plans to celebrate. It had been a year since we'd seen my oldest son, Dylan McGinnis, due to travel restrictions related to the pandemic and we were so excited to be seeing each other.



Dylan McGinnis

Dylan was spending the week with us in Arizona to celebrate his 24th birthday. Celebrations were in full swing, as we gathered for special dinners, a trip to Sedona and a staycation at a Scottsdale Resort. As he prepared to return to Indiana, I told him to think about whether he wanted to come back and visit during Thanksgiving or Christmas – or both. He loved the season because that was when he was able to spend extra time with his family and friends. I gave Dylan a hug and a kiss goodbye and told him that I was proud of him and that I loved him. As I watched him walk towards the airport terminal, I had no idea I had just embraced my son for the last time.

On Oct. 1, Dylan was a victim of gun violence while counseling a friend who was battling substance abuse. Upon learning the devastating news, my world instantly fell apart and my mind flooded with questions. How could this happen to somebody like Dylan?

Dylan grew up in Hamilton County, attended Brooks School Elementary, Maple Glen Elementary School, Westfield Middle School and was a 2016 Graduate of Westfield High School. He enjoyed sports such as little league baseball, youth football and rugby.

Birthday celebrations growing up were spent at our favorite local restaurants. As a young adult, he lived in Noblesville, on Morse Reservoir, where he enjoyed boating and water sports with his family and friends. He was always so kind to everyone and would give up the shirt on his own back to help another in need. He did not like conflict and would avoid it if possible. As recorded in the probable cause affidavit, Dylan was heard apologizing to his shooter just moments before being shot.

Approximately three weeks after his death, I received a call informing me that the individual who shot Dylan had a record as a violent offender. This person had been bailed out of jail on a \$5,000 bond, with pending felonies, by a charitable bail organization called The Bail Project. I wasn't aware that such organizations existed or how they operated but decided to quickly become informed due to the impact that it had on my family.

I learned that the City of Indianapolis financially supports this organization with taxpayer dollars. Additionally, they operate without regulation, meaning they can bail out whomever they want, regardless of the charge (felony or misdemeanor). Furthermore, once out on bond, the offender is not accountable to the charitable bail organization and the organization does not have any oversight of the offender once released.

It quickly became my mission to develop more of an understanding and immediately begin to take action to ensure that what happened to my family doesn't happen to others.

Charitable bail organizations need to be regulated. In principle, aiding an individual who stole food from the grocery store to feed their family is admirable; however, that is not how this organization operates. They are bailing out offenders with a violent criminal history.

Just three months prior to Dylan's shooting, Marcus Garvin (charged with a stabbing in a convenience store) was bailed out of jail by The Bail Project. It is alleged that he then proceeded to murder his girlfriend. Just two months after Dylan's shooting, Deonta Williams was bailed out of jail by the same organization and has been accused of stabbing two police officers.

My husband and I have met and are committed to working with Indiana state legislators to discuss the presentation of a bill during the next legislative session to regulate charitable organizations. The regulation would prohibit charitable bail organizations from posting bond for offenders with felony charges and impose a bail bond cap of \$2,000 on misdemeanors.

My wish is that this bill gets passed so that no other family falls victim to the actions of such organizations.

To bail or not to bail, ask Michigan lawmakers

By  [Emerson Wigand](#) | 3 hours ago

By EMERSON WIGAND
Capital News Service

LANSING – Michigan’s bail system punishes poor people and should consider risk of flight, the ability to pay and other circumstances when deciding to grant it, say reform advocates.

About half of all Americans have \$500 or less saved for emergencies, said John Cooper, the executive director of Safe & Just Michigan, a justice change advocacy group.

“So if you get pulled over without insurance and your bail is \$500, you can’t get out,” he said.

It is a big issue in Detroit, where high car insurance costs and minor speeding offenses can pile on, said Rep. Stephanie Young, D-Detroit.

“So, oftentimes we have folks in jail because they cannot post bond,” Young said.

People can lose their jobs and their homes because of this, said Rep. David LaGrand, D-Grand Rapids.

“We’re sort of creating this failure event for people living on the edge,” LaGrand said. “Then we blame them when they fail.”

A bipartisan group of legislators, including Young and LaGrand, have introduced seven bills to “decouple wealth from detention.” They await hearings in the House Judiciary Committee.

The package would require more information on finances and past history to help judges decide whether to grant bail, LaGrand said. The bills would remove the need for bail for those accused of most misdemeanors, as they don’t present a threat.

Bail doesn’t make sense for some offenses, said Jeff Clayton, the executive director of the American Bail Coalition, a national organization representing the bail industry. But removing too many bail-eligible offenses could limit the discretion of judges.

He said he doesn’t find the Michigan proposal reasonable.

“More people will be released under the more violent categories of crime as a result of these reforms as well,” he said.

Concerns over community safety and security should be considered, LaGrand said, but cash bond systems can make a community less safe.

The proposed changes would not just remove bail costs for minor crimes, he said. It also would restrict bail options for violent cases.

Under the current system, bail is less restrictive for wealthier people, LaGrand said, and can allow actual violent offenders to return to the community.

“Detention should be a byproduct of risk, not a byproduct of wealth,” LaGrand said.

The legislation still would require bail in serious cases, he said. Most misdemeanors should not require bail, but the legislation makes exceptions for crimes like domestic violence.

Young said, “This isn’t for violent criminals. It is designed to get folks out of the system and back to living their lives until they have to appear.”

The American Bail Coalition supports some aspects of this package, Clayton said. There should be greater due process and removing bail consideration for some minor offenses. But he said the cash bail system should be preserved.

“It creates a proper balance between liberty and detention and defendants rights,” Clayton said. “And I think it creates an incentive for defendants to return to court.”

But Joshua Hoe, a Safe & Just Michigan policy analyst, said that hasn’t happened in states that have changed their bail laws.

Thoughtful changes do not lead to crime, he said.

“Our version of bail reform is not as broad, and it focuses on both the risk of harm and non- appearance.” Hoe said.

LaGrand said using money to determine risk disproportionately impacts poor people. Given correlations between wealth and race, it also means a bigger impact on people of color.

Bail jeopardizes the livelihoods of those who can’t afford it, Young said. People can lose their children if they cannot care for them because they cannot afford it.

Cooper said, “Many people are angry about child separation at the border. But that’s happening every day in Michigan cities because of things like cash bail.”

Tuesday, December 14, 2021

CRIME WATCH 8

Push to add regulations to charitable bond organizations after 3 repeat offenders' bonds covered



by: Sierra Hignite

INDIANAPOLIS (WISH) — A mother is calling for accountability and regulation surrounding charity bail organizations at the state level after her son was killed in October.

The man charged in Dylan McGinnis' murder had 3 pending felony charges when his bond was paid by The Bail Project.

There have been at least three instances this year where The Bail Project covered bail for someone who went on to commit a murder or another violent crime while out on bond.

Three weeks after Nikki Sterling's son, Dylan McGinnis, was murdered in October she found out the man who was charged in her son's murder, Travis Lang, was out on bond that had been paid for by The Bail Project.



Travis Lang, photo courtesy IMPD

“While we support the intent maybe for misdemeanors, you know smaller offences,” Sterling said. She continued, “the types of individuals that were being bailed out was alarming to us.”

Sterling would soon come to find that The Bail Project had covered at least a portion of the bond for multiple people who would go on to commit crimes while out on bond.

Marcus Garvin murdered his girlfriend while out on bond and on GPS monitoring in August.



Marcus Garvin, photo courtesy IMPD

Deonta Williams stabbed two IMPD officers while out on bond in early December.



Deonta Williams, photo courtesy IMPD

Both had a previous criminal record and their bonds were reduced, thus starting Sterling’s mission at the state level to make a change.

“There is no obligation on behalf of the offender that is being bailed out to report to The Bail Project and there is no oversight to the offender once they are bailed out,” Sterling said.

In the 2021 legislative session, a bill regarding charitable bond organizations died. It limited those eligible to receive money from these organizations to people charged with misdemeanors and the organizations would only be able to pay \$2,000 of the bond. Sterling is hopeful that a similar bill will be introduced this coming session in January.

“I am not saying dissolve it because I think that there could be some beneficial

outcomes, it just definitely needs to be better regulated,” Sterling said.

When Lang’s bond was paid by The Bail Project, he had three pending felony cases against him. When asked about the efforts to regulate this process, The Bail Project said:

“At the time we interviewed Mr. Lang, his grandmother and fiancé had already secured part of his bail through a bail bonds agent, but they could not afford the rest. We provided assistance so they could bring him home while he waited for the court to decide his case. We denounce violence in all its forms, and it is never our intention to put anyone at harm.”

David Gaspar, National Director of Operations with The Bail Project

News 8 did reach out to the representative who sponsored the 2021 bill regarding the regulation of the charitable bond organizations but we have not heard back on whether or not they plan to reintroduce a new version of the bill this year.

Friday, December 17, 2021

Mom wants The Bail Project reined in after her son was gunned down in Indianapolis



By: [Vic Ryckaert](#)

INDIANAPOLIS — Dylan McGinnis was gunned down on the east side of Indianapolis in October.

The man accused of killing him was free on bail, records say, thanks to help he received from The Bail Project, a nonprofit that helps poor people get out of jail.

Now, McGinnis' mother is angry and she wants groups like The Bail Project to be more accountable and better regulated.

"Once the offender gets bailed out of jail, there's no accountability to The Bail Project on behalf of that offender," Nikki Sterling said. "This organization is bailing out violent offenders. These are not your misdemeanor charges. We are putting violent criminals back out on the street."

The Bail Project is a national nonprofit that pays bail for criminal defendants too poor to pay for it themselves. The group operates a revolving bail fund that, [according to its website](#), it uses to "prevent incarceration and combat racial and economic disparities in the bail system."

But the group has drawn controversy in recent months as the [homicides in Indianapolis have reached a new record high](#). [Critics blame the county's "revolving door" justice system](#) that allows violent criminals back on the streets not long after police arrest them.

The Marion County Superior Courts criminal judges on Monday voted to [suspend their support for The Bail Project](#), citing the group's failure to provide detailed information and data. The judges want to know more about who the group helps and what charges they face. The judges invited The Bail Project representatives to bring additional data to a closed-door meeting next month.



Vic Ryckaert/WRTV

Nikki Sterling, Dylan McGinnis' mother.

The Bail Project pushes for criminal justice reforms and works to bring equity to a system that

many critics say penalizes people just for being poor.

"The amount of money in someone's wallet should not determine whether they're incarcerated pretrial," The Bail Project says on its [website](#).

In Indianapolis, The Bail Project posted bail for 941 defendants since it launched operations here in November 2018. The average bail amount was \$2,130 and clients make 95% of the court hearings, according to the group's most recent report.

David Gaspar, the group's national director of operations, said it should make no difference who pays bail.

"Judges set cash bail and once they do, it should not matter who posts the bail, whether it is a family member, a bail bonds company, or a charity like ours," Gaspar said in a statement emailed to WRTV. "The fact that our not-for-profit is being singled out for requirements is concerning."

When asked about the group's criteria for deciding who to help, a spokesman for The Bail Project said they assist low-income defendants who can't afford bail on their own.

"Once we receive a referral from a family member or the public defender's office, we interview the individual to learn more about their situation and assess their needs," the spokesman said in an email to WRTV. "We ask questions about housing stability, transportation and, if appropriate, whether the person is interested in substance use treatment or mental health resources."

The Bail Project also considers whether an individual has a family to support or if their health may be at risk in the jail because they won't have access to medication or treatment.

Sterling agrees that some people don't belong in jail. The problem, Sterling said, is The Bail Project is bailing out people accused of more than just misdemeanors and nonviolent crimes.

Lang, the man charged with killing Sterling's son, was in jail in January on a cocaine-possession charge when The Bail Project said it paid a portion of his bail, with family covering the rest. At the time, Lang faced other pending cases for burglary, residential entry and resisting law enforcement.

McGinnis, Sterling said, was helping a friend who was an addict when he rode in his car with her on the east side on Oct. 1. She was meeting a man to buy Xanax and heroin, prosecutors say.

"Dylan is such a loving person, very kind hearted," Sterling said. "He had such a great personality and didn't like conflict. He would avoid it if possible. ... He helped his friends out whenever he could or had the opportunity."



Provided by Nikki Sterling

Dylan McGinnis

According to a probable cause affidavit:

Lang was in the back seat of a car with McGinnis and his friend in the front. Lang and the woman argued over whether she agreed to pay him \$60 or \$80 for the drugs. They fought and the woman punched Lang in the face. Lang got out of the back seat and fired nine shots that struck McGinnis and his friend.

McGinnis, 24, died at the scene. The friend was treated at Eskenazi Hospital.

Lang is one of three people who have been helped by The Bail Project and were later accused of violence.

In January, The Bail Project paid \$1,500 bail for Marcus Garvin, freeing him while he awaited trial on charges of felony battery after he allegedly stabbed a man at an east-side convenience store in December. Garvin was on bail and wearing a GPS ankle bracelet on July 24 when Marion County prosecutors say he stabbed Christie Holt to death at an east-side motel. Garvin was charged with murder on Aug. 3.

In April, The Bail Project paid \$750 bail to free Deonta Williams, who had been jailed on a felony burglary charge. Williams, 20, is accused of making a fake 911 call to lure two Indianapolis Metropolitan Police Department officers to him before he stabbed them in an unprovoked attack. Prosecutors charged Williams with attempted murder.

"The Bail Project is committed to doing everything we can to support people after their release, including connections to housing, treatment, mental health services, and other resources," the group's spokesman said in an email. "It is never our intention to put anyone at harm, but much like the court, we cannot predict what a person might do in the future."

The Bail Project reviews these cases to see if they might have done something differently, the spokesman said.

"What these cases truly highlight is that people in a state of crisis easily fall through the cracks," the spokesman said.

In the wake of these tragic cases, McGinnis's mother is calling for more state oversight of organizations like The Bail Project. Sterling said she has asked lawmakers to set limits on the people these organizations assist. She wants them to find a way to ensure these groups keep tabs on the people they bail out.

"You have your police officers that are out there trying to protect the public by putting these individuals in jail and then you have the charitable organization coming in and taking them back out," Sterling said.

Some Indiana lawmakers are listening.

Sen. Aaron Freeman, a Republican from Indianapolis, [announced Thursday he was sponsoring a bill](#) that would require The Bail Project and similar groups to register with the Department of Insurance and would bar them from bailing out people charged with felonies.

"These nonprofits need to have some set of standards to follow," Freeman said in a statement. "Under no circumstances should public tax dollars be used to bond criminals out of jail, and if bail is paid by a nonprofit organization, that money should go toward court administrative costs and be deducted from what is returned."

The Bail Project did get some of its money from Indianapolis taxpayers, [WRTV reported in August](#). The group was awarded two of the city's crime-prevention grants totaling \$150,000.

The public money does not pay bail, according to The Bail Project and the Central Indiana Community Foundation, which administers and awards the grants on behalf of the city. The taxpayer funds pay for services aimed at reducing recidivism and making sure defendants have transportation, jobs assistance and other services they need to ensure they attend their court hearings, officials said.

Sterling believes that public money should not go to groups like The Bail Project, especially now when Indianapolis is [experiencing record violence](#).

She said she hopes to help Sen. Freeman and other lawmakers in their efforts to tighten control of charitable bail organizations.

"Dylan was a helper," Sterling said. "If I can help prevent another mother from getting the same phone call that I received that night, I would say that I I've done my job in carrying out his legacy."

MORE: [Indianapolis gave \\$150K to group that bailed out man accused of killing girlfriend | Hogsett says he would support audit of city grants that gave \\$150k to group that bailed out man accused of killing girlfriend | FOP president demanding that local leaders close the justice system's 'revolving door' | Prosecutor files attempted murder charges against man accused of luring, stabbing IMPD officers | Indianapolis gave \\$150K to group that bailed out man accused of killing girlfriend](#)

Sunday, December 19, 2021

Sen. Braun: “Good news for Indy” on suspension of Bail Project partnership

POSTED BY: [THE REPORTER](#) DECEMBER 19, 2021

Editor’s note: Readers of the Reporter may remember a [guest column published earlier this month](#) by Nikki Sterling, the mother of a young man from Hamilton County who was shot in October by a violent repeat offender after the offender was bailed out of jail with the help of The Bail Project. In her column, Sterling called for regulation of such organizations. U.S. Senator Mike Braun is now calling for regulation as well.

U.S. Senator Mike Braun (R-Ind.) released the following statement following the announcement that the Marion County Superior Court would end its support of The Bail Project.



Braun

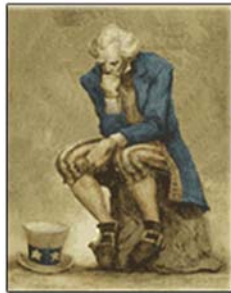
“It’s good news for Indy that The Bail Project will no longer be able to release criminals from jail without accountability,” Sen. Braun said, “but this is only the tip of the iceberg for soft-on-crime activist organizations and prosecutors putting their agenda over Hoosiers’ lives. I will continue working to hold these groups accountable and return law and order to our cities.”

Last week, Sen. Braun sent a letter to Indiana leadership and the President of the Indianapolis Fraternal Order of Police announcing his support for additional restrictions on organizations like The Bail Project. He also indicated he will pursue ways to limit federal funding to The Bail Project and similar organizations dedicated to releasing individuals from jail without accountability.

The Bail Project and other similar organizations post bail for individuals but can skirt the traditional rules and regulations for bail agents that include responsibility for post-bail behavior and ensuring that these individuals attend court hearings.

Sen. Braun weighed in on The Bail Project after [two repeat offenders](#) released on bail paid by The Bail Project went on to commit murders in Indianapolis, and one released individual [stabbed two Indianapolis Police officers](#) this month.

[Click here](#) to read Sen. Braun’s letter to Governor Eric Holcomb on The Bail Project.



American Thinker

December 23, 2021

California's Zero-Bail Policies Have Been A Deadly Failure

By [Jeffrey J. Clayton](#)

California's state lawmakers recently failed to pass bail reform legislation, creating a case study in how fundamentally poor public policy will self-destruct if it's exposed for what it is. On the face of it, there is a logic to the continuing argument that cash-based bail is unfair to people who have little or no money. But that simplistic premise is deeply flawed and has led to a huge increase in violent crime in California, as well as in other places that implemented the policy. Unfortunately, the grim repercussions are not just statistical. There is a human face to criminal justice reform gone bad—and ultimately it tripped up the legislators behind the latest attempt at force-feeding bail reform to the Golden State's citizens.

Even the staunchest bail reform advocates were compelled to take a step back after the horrific events of September 6. In Sacramento, Troy Davis, a convicted felon, broke into 61-year-old Kate Tibbitts's home, raped and murdered her, slaughtered her two dogs, and then set the house ablaze. The night before, Davis had exposed himself on a neighbor's porch.

When it emerged that Davis had been released on zero bail, the impetus for a bail reform bill that was steamrolling its way through the California Senate immediately screeched to a halt. But is that the end of the story or is there another domino waiting to fall?

In 2020, as an emergency measure during the COVID-19 pandemic, the California Judicial Council, hoping to prevent COVID's spread, had implemented zero-bail schedules to reduce jail populations. Senate Bill 262 was later introduced in another of a series of attempts to eliminate most monetary bail. For reasons having nothing to do with protecting health and safety, Senate Bill 262 would have made the schedules permanent. In effect, if defendants could not afford bail, they would simply be released.

The grim reality of zero-bail policies became increasingly apparent as late summer turned to fall. Dramatic expansions in crime. Rampant retail theft. Law enforcement and prosecutors unified in their complaint that the zero-bail schedule was a problem. A **big** problem. In fact, the Judicial Council had terminated the zero-bail schedule order even before its emergency authority expired, presumably because these policies failed. Troy Davis's rape and murder of Kate Tibbitts was the final straw in Sacramento, at least for Senate Bill 262.

Even as the importance of bail in the criminal justice system is being recognized, the careful balance that it creates between defendants and the public (including victims of crime) has grown more precarious. For example, retail criminals are now organized and increasingly brazen. A mayor in a California city could order police to go on an old west-style round-up of these lawbreakers, who would then immediately walk free out of jail...only to go out and do it again.



Image: [Empty ball and chain](#). Piquesels.

Sacramento County District Attorney Anne Marie Schubert laid the blame for Davis's heinous acts squarely on California's bail policies. She indicated that zero bail was misapplied in his case, as parolees should not have been eligible for free release. But she also cautioned that the right to an affordable bail, as stipulated in Senate Bill 262, would have set Davis free pending trial no matter what.

The reality is that Senate Bill 262 aside, the pendulum has swung so far over the years that no single bill can fix the fundamental problems with criminal justice in California and restore law and order to a point where citizens feel safe and protected.

My dad was a career cop. He always told me that, in the old days, there were two things you never wanted to do: get arrested or go to jail. Usually, a few nights or a week in jail was enough to make the point—and it kept the peace. The idea of strong “prosecution” or “collateral consequences” was not on anyone's mind. Today, there is no peace to be kept because the presumption of innocence when dealing with repeat criminal defendants pretrial, has been extended far beyond any definition of reasonableness.

In a 2016 report that criminologist Daniel S. Nagin wrote and the U.S. Department of Justice issued, Nagin concluded, “Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.” He added that law enforcement has an increased ability to deter crime when it does things that “strengthen a criminal's perception of the certainty of being caught.” Zero-bail for a list of crimes in fact does quite the opposite—it strengthens the perception of getting away with it.

The reality is that judges in California—whom voters elect—have always been prepared to handle bail without political meddling. Rather than interfering in areas outside of their authority, legislators must turn their attention to speedy trial reform, along with deterring and punishing repeat offenders. Meaningful criminal justice reform is a noble and just cause, and reasonable minds should work together to improve the system.

While there may be disagreements about the right path to take, it should never be lost on decision-makers that the debates are not just about concepts, but about all the human beings involved—both the defendants and our citizens. When bad

public policy harms real people, it's time to put political rhetoric and agendas aside. Kate Tibbitts deserved better, as do all Californians.

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.



[LOS ANGELES](#) Published December 24, 2021

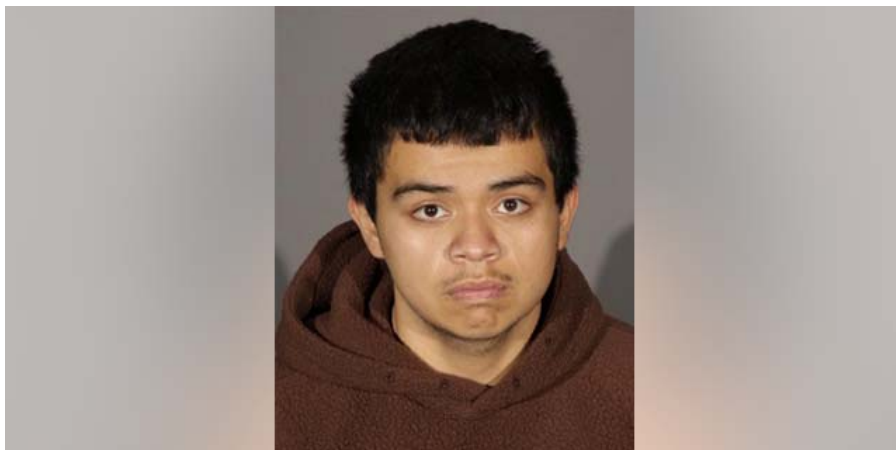
Man arrested for alleged kidnapping, sex with minor, Gascon's office recommended \$0 bail: California police

The California Supreme Court eliminated cash bail earlier this year for defendants who can't afford to pay it

By [Bradford Betz](#) | [Fox News](#)

A 21-year-old homeless man was arrested in [Los Angeles](#) County this week on charges of kidnapping and having sex with a minor, according to [police](#).

Simon Lopez was arrested Monday afternoon in a residential neighborhood of Canoga Park, Glendale police said in a [press release](#).



Simon Lopez (Glendale PD)

Lopez's arrest stemmed from a reported confrontation between a minor and an adult male earlier this month in Glendale, police said. Investigators learned that the male was seen physically assaulting the minor before fleeing the area in a vehicle.

Investigators also learned that Lopez had been having a romantic relationship with a minor under the age of 15 and had a non-local warrant out for his arrest, according to police.

Police tracked down Lopez in the 21000 block of Roscoe Blvd. in Canoga Park on Monday around 2:30 p.m. and arrested him.

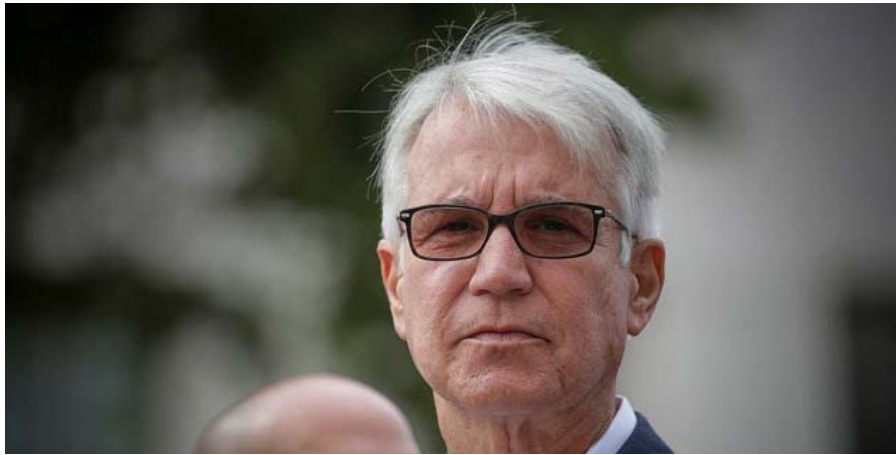


A Los Angeles County Sheriff's Department prisoner transportation bus leaves the Twin Towers Correctional Facility in Los Angeles. (AP Photo/Damian Dovarganes)

He was charged with kidnapping, domestic violence, engaging in intercourse with a minor, and for his outstanding warrant. Jail records show he is in custody at the Twin Towers Correctional Facility in Los Angeles.

Glendale police said District Attorney George Gascón's office recommended that Lopez's bail be set at \$0 because of the county's emergency "Zero-Dollar" bail order. When reached for comment, a spokesman for Gascón's office appeared to contest the Glendale police, telling Fox News its prosecutor did not recommend \$0 bail and that a judge ultimately set bail at \$100,000.

The "Zero-Dollar" policy was implemented to reduce crowding in county jails during the COVID-19 pandemic and applies to misdemeanors and lower-level felonies.



Los Angeles District Attorney George Gascon is facing a second recall attempt as criticism over his progressive policies intensifies. (Irfan Khan / Los Angeles Times via Getty Images)

Justice reform advocates have long argued that low-income and minority communities are disproportionately affected by cash bail. Earlier this year, the California Supreme Court eliminated cash bail for defendants who can't afford to pay it – essentially requiring that poor defendants be freed unless they are deemed too dangerous to be released awaiting trial.

The court's decision came despite California voters' November 2020 rejection of a proposed end to the state's cash bail system.

The "zero bail" policy has since come under scrutiny amid an increase in crime, most notably with a series of brazen smash-and-grab robberies at high-end retail stores. Gascón's progressive policies, too, have made him the target of multiple [recall attempts](#).

Jeff Clayton, Executive Director of the American Bail Coalition, slammed Gascón in a statement to Fox News saying that if the D.A. had his way, "Simon Lopez and many, many others would be out on the street to re-terrorize their victims."

"It is important to note that Lopez is a transient, who also had an outstanding warrant for his arrest," Clayton said. "This would lead any reasonable person to conclude that he was a severe flight risk and danger to the community. But apparently not to DA Gascón. According to his standards, Lopez is innocent and free to go."

The Associated Press contributed to this report.



Crime • Published December 27, 2021

Arizona mom on a mission against group that bailed out son's alleged murderer

Travis Lang was bailed out of jail in January and then allegedly shot and killed Dylan McGinnis on Oct. 1

By [Adam Sabes](#) | [Fox News](#)

An Arizona mom is raising awareness after her son was killed in October, allegedly by a man who was out on bond with the help of an organization called The Bail Project.

Dylan McGinnis, 24, was allegedly shot and killed on Oct. 1 by Travis Lang, who was previously being held in jail for possession of cocaine in addition to three other felony charges, including breaking and entering, resisting arrest and burglary, according to [Fox 59](#).

Lang is now being charged with murder.

The initial charges were filed in December 2020, and Lang posted \$5,650 in bail funds in January 2021, according to court documents. The Bail Project assisted with paying a portion of the bail.



Dylan McGinnis (Courtesy: Nikki Sterling)

McGinnis' mother, Nikki Sterling, told Fox News Digital that she was shocked after finding out Lang was bailed out of jail by The Bail Project.

"When I first learned about (The Bail Project), I needed to learn more about what their mission was, I didn't know what they were doing. But then when I found this out, honestly, I was shocked," Sterling said.

Sterling said she felt a desire to raise awareness of what this organization does so other families don't have to go through the pain of losing a child in the way she did.

"And then it became a mission for me to spread the awareness that there is an organization nationwide that is supporting violent offenders to get out and helping them get out of jail by bailing them out," Sterling said. "But you know, if I can help prevent this from happening to any other family, then I would say that, you know, my life has been purposeful and also carrying out the legacy of my son, who was always so helpful to other people."



Travis Lang mugshot (IMPD)

Sterling said McGinnis was helping a friend get back on her feet when he was killed. The local news outlet reported that McGinnis was in the car with a woman who was doing a drug deal with Lang when he was shot and killed.

"Just knowing Dylan and the kind of person that he was, in my opinion, he most likely just did not want her to go by herself or be alone. He probably feared for her," Sterling said.

Sterling said Dylan is being remembered most for how much he helped others out when they were in tough situations.

"He was a great young man," Sterling said. "He loved spending time with his family and friends the most. And also helping others. I think when we take a step back and we look at everything that he's done and everything that we found out. You know, even at his funeral visitation, the stories that we continue to hear from friends and relatives was just how much he helped other people out of different situations, whether it be mental abuse or physical abuse from family."



Dylan McGinnis (Courtesy: Nikki Sterling)

A spokesperson for The Bail Project told Fox News that "the Bail Project provided bail assistance for Mr. Lang last January for part of the bail he needed for his release."

"At the time we interviewed Mr. Lang, his grandmother and fiancé had already secured part of his bail through a bail bonds agent, but they could not afford the rest. We provided assistance so they could bring him home while he waited for the court to decide his case. We denounce violence in all its forms, and it is never our intention to put anyone at harm," David Gaspar, the director of operations for The Bail Project, said.

The organization's [website](#) states that it combats "mass incarceration by disrupting the money bail system—one person at a time."

"We restore the presumption of innocence, reunite families, and challenge a system that criminalizes race and poverty. We're on a mission to end cash bail and create a more just, equitable, and humane pretrial system," the website states.

McGinnis is hardly the first victim of alleged charitable bail fund misuse.

In August, George Howard, 48, was charged with two counts of second-degree murder after being bailed out of jail weeks earlier by the Minnesota Freedom Fund when he was charged in connection with a domestic assault case. Vice President Kamala Harris [supported](#) the Minnesota Freedom Fund while on the campaign trail in 2020.



Dylan McGinnis (Courtesy: Nikki Sterling)

Joe Gamaldi, national vice president of the Fraternal Order of Police and an active-duty sergeant in the Houston Police Department, told Fox News Digital that while there is a role for charitable bail funds to play in society, The Bail Project isn't helping communities.

"They are allowing people to donate and then they're bonding out violent criminals who are repeat offenders. I mean, this is not the shoplifting a candy bar from Wal-Mart. These are people who are committing murders, aggravated assault," Gamaldi said.

Further, Gamaldi alleged that organizations like The Bail Project only support a "radical system" where cash bail does not exist and also alleges that they don't care about public safety.

"You know, I'll be honest, I don't think they give a damn about public safety," Gamaldi said. "They know exactly the people that they are bailing out. They know that these individuals that are out on already multiple felony bonds and they're helping them get another one. They know that some of these are very violent individuals, and you cannot look at this with a straight face and tell me that you care about the community that you're operating in."

Gamaldi said recent legislation in Indiana could solve some issues with charitable bail funds, such as requiring them to report to the Department of Insurance and eliminate charity bail funds for families.

Fox News' Michael Ruiz contributed to this report.



Indiana mom hits out at woke bail funds after one helped free cocaine and burglary suspect who then murdered her son, 24

- Nikki Lang said she was 'shocked' to find out The Bail Project supported 'violent offenders to get out [of jail]'
- Travis Lang, 23, was released on bail after the organization assisted him with the payment
- Lang later received murder charges for the death of Dylan McGinnis, 24, after he allegedly shot him over a dispute with his friend during a drug deal
- McGinnis had tagged along with a female friend, who was dealing with substance abuse, on October 1. Police reported he was not involved in the deal
- Lang allegedly got out of his vehicle and shot several rounds into the car, injuring the woman and killing McGinnis
- He is the second person to be released through a bail relief fund to later receive murder charges

By [ALYSSA GUZMAN FOR DAILYMAIL.COM](https://www.dailymail.com/author/alyssa-guzman)

PUBLISHED: 12:23 EST, 27 December 2021 | **UPDATED:** 13:05 EST, 27 December 2021

An [Indiana](#) mother rebuked woke bail funds after a cocaine and burglary suspect was freed and 'murdered her son.'

Nikki Sterling - the mother of Dylan McGinnis, 24, who was shot and killed on October 1 - is lashing out against The Bail Project after the organization helped get the suspected 'killer' Travis Lang, 23, out of jail on cocaine possession and burglary charges in January.

The grieving mother was 'shocked' to find out that the organization supported 'violent offenders to get out [of jail]' by bailing inmates out. It is one of a number that have been heavily promoted on social media since [Black Lives Matter](#) protests in the wake of [George Floyd](#)'s murder, and raises cash to bail those who cannot afford to make bail themselves.

'If I can help prevent this from happening to any other family, then I would say that, you know, my life has been purposeful and also carrying out the legacy of my son, who was always so helpful to other people,' Sterling said.

Lang was being held in jail for possession of cocaine and three felony charges for breaking and entering, resisting arrest and burglary prior to posting his bail. Lang was let out in January after he posted his \$5,650 bail, which The Bail Project provided a portion of the fund, while his family stumped up the rest. It is unknown how much the organization provided.



Nikki Sterling (right) has lashed out against The Bail Project for releasing her son's 'killer' Travis Lang, 23, who shot and killed her son Dylan McGinnis, 24 (left)





Travis Lang (left) has been charged with murder for the death of McGinnis (right), who died on October 1 around 11.30pm. McGinnis allegedly went with a female friend, who was dealing with substance abuse, to make a drug deal with Lang. Law enforcement has confirmed that McGinnis was not involved in the deal

The former inmate is now facing murder charges for the death of McGinnis.

Lang would end up 'killing' McGinnis after the 24-year-old tagged along with a friend who was dealing with substance abuse, who was doing drug deal with Lang to get Xanax and heroin, according to the [Indianapolis Star](#).

The pair allegedly got in a dispute over money and Lang exited his vehicle and fired several rounds into the pair's car while demanding the money.

He reported said: 'Give me my money before I start squeezing in this [expletive],' the Indianapolis Star reported, before shooting the girl in the leg and McGinnis several times.

Law enforcement reported that McGinnis sat in the car while his friend and Lang made the drug deal. It is unclear when the woman got back into the car before Lang started shooting.

McGinnis' mother said her son went with his friend because he 'feared for her' and that he was 'always help[ing]' others.

'Just knowing Dylan and the kind of person that he was, in my opinion, he most likely just did not want her to go by herself or be alone. He probably feared for her,' Sterling told Fox News.

'His family, his friends, the broken, the outcasts, perfect strangers. He was there to always help them which, you know, unfortunately, got him into the situation that he was in on October 1, being there for a friend,' she told [Fox 59](#).

McGinnis and the unidentified woman were found by police with gunshot wounds around 11.30pm on October 1. McGinnis was pronounced dead at the scene from multiple gunshot wounds and the woman was transported to a hospital in stable condition.

The Bail Project confirmed to Fox News that it provided funds in addition to Lang's mother and fiancé, but it 'denounces all forms of violence.'



McGinnis was shot multiple times and was declared dead at the scene. Lang reportedly got out of his vehicle after the woman and he got into a dispute over money. He then proceeded to shoot bullets into the car McGinnis was in, hitting the woman on the leg and killing McGinnis



Sterling is now calling out The Bail Project for assisting in getting 'violent offenders' out of jail. Lang is the second former inmate who was released through a bail relief fund that later received murder charges

"We denounce violence in all its forms, and it is never our intention to put anyone at harm," The Bail Project's Director of Operators David Gaspar told Fox News.

Sterling isn't the only one criticizing The Bail Project. The Fraternal Order of Police Vice President Joe Gamaldi told Fox News that the organization and others like it are doing more harm than good.

"They are allowing people to donate and then they're bonding out violent criminals who are repeat offenders. I mean, this is not the shoplifting a candy bar from Walmart. These are people who are committing murders, aggravated assault," Gamaldi told the news organization.

"You know, I'll be honest, I don't think they give a damn about public safety," he slammed The Bail Project.

"They know exactly the people that they are bailing out. They know that these individuals that are out on already multiple felony bonds and they're helping them get another one. They know that some of these are very violent individuals, and you cannot look at this with a straight face and tell me that you care about the community that you're operating in."

McGinnis isn't the first victim to die after a bail fund organization helped get an inmate out of jail.

In August, George Howard, 48, was charged with two counts of second-degree murder after Minnesota Freedom Fund bailed him out after killing two people on I-94. He was jailed for domestic assault prior to his bail.

The Minnesota Freedom Fund, which is now under new leadership, said they 'will continue to assess them to ensure that we are being responsive to the safety and needs of our community.'

DailyMail.com has contacted Sterling and The Bail Project for comment.

Tuesday, December 28, 2021

The Bail Project under scrutiny for releasing potentially violent criminals

Melissa Gibson The Lebanon Reporter



Dylan McGinnis and his mother Nikki Sterling celebrated his birthday in Arizona, just weeks before his untimely death.



Twenty-four year old Dylan McGinnis was killed on Oct. 1, 2021.

It's the phone call no mother wants to receive.

Nikki Sterling's 24-year-old son, Dylan McGinnis, had been shot and killed in Indianapolis on Oct. 1.

Born and raised in Thorntown, Sterling's family still resides in Boone and Hamilton counties, though she now lives in Arizona. McGinnis stayed in Indianapolis when his mother moved.

"Dylan was a happy-go-lucky kid growing up," Sterling said. "He had a lot of friends and loved spending time with family. In fact, just the weekend before, he was visiting my parents in Thorntown for the Festival of Turning Leaves. He just didn't know a stranger."

As an aspiring electrician, he had committed to work with his father in the electrical business and had just returned from a visit with his mother for his 24th birthday.

"He had been helping a friend with a substance abuse addiction. Her car was broken down and she asked him to give her a ride," Sterling said. "Dylan does not do drugs and showed no drugs in his system in the coroner's report but he was trying to help her, and even let her drive his car

to this location.”

She believes he had no idea where he was going that night and certainly didn’t anticipate the danger he was in.

The friend began arguing with the alleged shooter, Travis Lang, 23, and kicked him out of the car. Lang allegedly turned and fired nine bullets into the car on McGinnis’ side, injuring the young woman and killing McGinnis.

“It was over \$20,” Sterling said. “She had her phone recording the conversation and you can even hear Dylan apologizing for the argument and trying to diffuse the situation.”

With their minds still reeling from the sudden loss of their son and the funeral in Indianapolis, Sterling returned to Arizona and began asking questions.

“We got a phone call and was told the shooter had three pending felonies and had been bailed out on a \$5,000 bond through this charitable bail organization,” Sterling said. “My husband and I started looking into it and learned about The Bail Project.”

Attempts to contact The Bail Project by the *The Lebanon Reporter* went unanswered, but according to its website, the non-profit organization hopes to combat mass incarceration by disrupting the money bail system. Cash bail systems have long been a topic of debate.

Often, economic resources or lack of family support can place an accused person in jail for long periods of time, simply because they don’t have the funds to bail themselves out. According to the end result, the accused then faces job loss, custody issues with children, and financial debt, among other issues.

The problem, according to Sterling and others, is that the organization has taken things too far.

“Their motto is ‘innocent until proven guilty.’ They aren’t bailing out shoplifters that need food. They’re bailing out violent offenders and they take no accountability to the release and oversight through the legal process,” Sterling said. “There is no reason why my son had to die.”

Consider a domestic violence situation, drug-related situation or gang-related situation that could potentially de-escalate with jail time. Releasing accused offenders within hours of their arrest could lead to further violence.

Marcus Garvin, 33, was charged in a stabbing incident last December at an Indianapolis Circle K gas station, bonded out by The Bail Project, and then subsequently cut off his ankle monitor and murdered girlfriend Christie Holt less than six months later.

Before being bailed out by The Bail Project, Lang was sitting in jail earlier this year on charges stemming from cocaine possession and had three pending felony charges for breaking and entering, resisting law enforcement, and burglary.

“My husband and I are working with state legislators right now and we’re speaking with senators,” Sterling said. “Our goal is that a bill that had previously been presented to the House in 2020 will be back up in 2022 for a vote. We want charitable bail organizations to be regulated, prohibit them from positing bond for offenders with felony charges, and impose a \$2,000 bond cap on misdemeanors. We want to get this passed so we can prevent this from happening to someone else. I don’t want another mother to get this call.”

Indiana Senator Mike Braun agrees.

The Marion County Superior Court just recently announced they would end their support of The Bail Project. The Central Indiana Community Foundation has been using tax dollars to fund The Bail Project since 2013, so with financial support on hold, the organization will have to hold as well.

“It’s good news for Indy that The Bail Project will no longer be able to release criminals from jail without accountability, but this is only the tip of the iceberg for soft-on-crime activist organizations,” Braun said in a recent press release.

As for Sterling, she and her family are left to deal with the aftermath of losing their son.

“I haven’t been able to reconcile this. It’s still a shock,” Sterling said. “He was so innocent and it was a violent death. Dylan was my first born. He spent so much time with his father and their family, my parents, his brother and my husband and I. We’re absolutely broken.”

Sterling says the best thing others can do is spread awareness. Like many, she had never

heard of The Bail Project or similar organizations.

"You believe if someone is violent, they are off the street and sitting in jail," she said. "My son had nothing to do with the shooter and Dylan has been robbed of his future and our family has been robbed."

Lang is now facing murder and attempted murder charges. His trial is scheduled for March 2022.

Wednesday, January 5, 2022

Op-Ed: The Bail Project can bail out anyone, regardless of the charge. That should end.

Nikki Sterling

My son, Dylan Kyle McGinnis, was murdered in the most senseless and horrific way on Friday, Oct. 1, 2021. The world was robbed of one of its truly special gifts. In Christ-like fashion, Dylan loved his family, friends, the broken, the outcasts, and perfect strangers. There are no words that can express the amount of heartbreak.

Added to my pain was the shock of learning that his alleged shooter, a known violent offender, had been bailed out of jail on a \$5,000 bond, with pending felonies, by a charitable bail organization called The Bail Project.

I was even more dismayed to learn that the City of Indianapolis financially supports this organization with taxpayer dollars. Additionally, The Bail Project operates without regulation, meaning they can bail out whomever they want, regardless of the charge (felony or misdemeanor). Furthermore, once out on bond, the offender is not accountable to the charitable bail organization and the organization does not have any oversight of the offender once released.

In principle, aiding an individual who stole food to feed their family is admirable; however, The Bail Project is bailing out offenders with violent criminal histories, and sadly it is the very communities they claim to be advocating for that are in harm's way by having these dangerous individuals back on the street.



Dylan Kyle McGinnis Provided

My son is not the only person who has been killed or harmed by a violent offender bailed out by The Bail Project. Just three months prior to Dylan's shooting, 30-year-old Christie Holt was brutally murdered. Her alleged killer and former boyfriend was out on bail paid for by The Bail Project after being charged with battery by means of a deadly weapon and battery resulting in serious bodily injury for a stabbing at a gas station.

Just two months after Dylan's shooting, two IMPD police officers were ambushed and stabbed. Their alleged attacker was out on a bail after being

charged with burglary. The Bail Project helped get his bail reduced and provided cash to help the offender cover his bond.

When asked about their internal review process, they blame the judges. When questioned about their involvement in bailing out violent offenders, they point fingers at other bond agencies. A 2018 letter ordered quarterly updates from The Bail Project to the court, but they have failed to comply. Their reasoning? Covid-19 and staff turnover.

No doubt there needs to be a top-to-bottom assessment of the entire judicial system.

However, The Bail Project has shown itself to be unable, unwilling, or simply uninterested in taking ownership and accountability of the part they play in a broken system, and this is the exact reason they need to be regulated. While city officials in Indianapolis have been noticeably quiet on the topic, I'm thankful for Indiana's leadership at the state and federal level to push for much needed reform.

In particular, I'm proud to support Senate Bill 8 that will prohibit charitable bail organizations from posting bond for offenders with felony charges and impose a bail bond cap of \$2,000 on misdemeanors.

Occasionally in life you cross paths with someone who vibrantly lights up every room in which they walk. Dylan was that person for nearly everyone that ever met him. I don't want what happened to our family to happen to others'.

Nikki Sterling, an Indiana native, moved to Arizona in 2017.

Townhall

The New Resistance: Setting Dangerous Criminals Free



Sarah Lee | Posted: Jan 08, 2022 10:00 PM



Source: AP Photo/Andrew Harnik

Democrats on the Hill made a great show this week of their January 6 remembrance, holding vigils organized by [antifa-affiliated activists](#) and questioning why many of their GOP colleagues weren't sharing in the organized mourning (they were instead attending former Georgia [Sen. Johnny Isakson's funeral](#)).

The theatrics are no doubt meant to be a momentary distraction from the so-called "[summer of love](#)" riots following the death of George Floyd in May 2020, when cities were set aflame, dozens were killed, and many of the offenders were released by charitable bond nonprofits like [The Bail Project](#) or the [Minnesota Freedom Fund](#), the latter famously [promoted by Vice President Kamala Harris](#).

But for one Arizona woman, nothing will ever again tear her thoughts away from those charitable bail nonprofits because her son was murdered in October by a man released by one. And she's hoping the passion and sorrow of a grieving mother will help the Indiana legislature pass a bill that will make organizations such as The Bail Project – who released her child's killer – tighten up their processes.

Nikki Sterling's son, Dylan McGinnis, was 24 when he accompanied an acquaintance who had what Sterling describes as a substance abuse problem – she's certain her son had no foreknowledge of what was about to go down – on an ill-fated drug deal. The young lady got into a fight with the dealer while Dylan can be heard trying to calm the situation on a recording from the young woman's phone. The dealer eventually fired nine shots into the side of the car Dylan was sitting in, striking him twice and killing him.

And Sterling still, months later, has incredulity in her voice when she notes that the squabble started over a matter of \$20 dollars.

But what shocked her more was learning that the shooter, 23-year-old Travis Lang, had three pending felonies and was bailed out of jail by an organization called [The Bail Project](#), a group that covers up to \$5,000 on a surety bond and bills itself as an organization that advocates for the poor and seeks to keep people from long-term incarceration.

"They take in donations and use taxpayer dollars," says Sterling. "And their mission is to fight mass incarceration and provide bail for low-income individuals. But they don't look at the criminal history of the people they're bailing out; that doesn't come into play when they're getting people out of jail."

Sterling notes she's not averse to The Bail Project's tactics for people who commit misdemeanors but questions the judgment of bailing out a known criminal like Lang and Marcus Garvin, bailed out by The Bail Project for a stabbing incident and who then murdered his girlfriend less than six months later.

"I understand their mission of aiding individuals who can't afford bail on small charges, but where does it stop?" Sterling asks. "They're putting violent criminals back on the street. There is no oversight. Lang, once he was bailed out of jail, was not accountable to The Bail Project. He only had to promise that he showed up for his court dates."

The Bail Project, it should be noted, doesn't get reimbursed if its clients fail to show up for court.

But what Sterling and many others may not realize is that The Bail Project has a far more activist bent than merely advocating for the poor or engaging in a progressive-left version of criminal justice reform. The group openly claims that paying bail for those jailed is an "[act of resistance](#)" against a system that criminalizes race and poverty."

The organization was also embroiled in some controversy in September 2020, when Bail Project staffer Holly Zoller was seen at a violent [Black Lives Matter](#)-associated demonstration in Louisville, Kentucky, in possession of a U-Haul truck that Daily Caller reporter Shelby Talcott said contained "supplies such as signs, shields, [and] water."

A subsequent [PolitiFact assessment](#) noted, "Some of the signs bore logos associated with [antifa](#)." The Bail Project reportedly said Zoller was on her own time when she was seen in Louisville.

Sterling is unsurprised to learn of the more activist activities of employees of The Bail Project and hopes that Indiana, whose legislature is set to vote on [Senate Bill 8](#), which will create new rules for nonprofit organizations that pay defendants' bail, will lead the rest of the country in reassessing the wisdom of these organizations.

SB 8, according to the [Indianapolis Star](#), "prevents the nonprofit organizations from bailing out people accused of felonies — limiting them to depositing bonds of up to \$2,000 'for an indigent person charged with a misdemeanor.'"

Bail organizations in Indiana would also be required to register with the Department of Insurance, and SB 8 would prohibit "entities that receive state funding from posting bond."

Sterling and her family support this bill and are headed to Indiana from their home in Arizona so that Nikki can provide testimony, an effort she knows is small compared to what she's up against.

"On the bail project advisory board, you see celebrities' names, and I know the vice president was supportive of the Minnesota Freedom Fund," Sterling says. "But this isn't an isolated event in Indiana. Nationwide this is becoming a problem. And I know police departments are stretched. Fortunately, my case was solved thanks to eyewitnesses and a recording. But many are not, I think if they were, we'd see that more crimes are being committed by people released in this way. If you have a revolving door system in place, you're hurting the people trying to protect us, and increasingly hurting the people who are most vulnerable; the people who these organizations say they are trying to protect."

Lawmakers hear from opponents, supporters of Senate GOP crime bill package

By KATRINA PROSS

Posted January 11, 2022



The Senate Corrections and Criminal Law Committee heard testimony Tuesday on a collection of crime bills. (FILE: WFIU-WTIU)

A package of bills proposed by Republican senators in efforts to curb crime in Marion County were met with some opposition during a committee hearing.

The bills were unveiled [last month](#), and the Senate Corrections and Criminal Law Committee heard testimony Tuesday. More than 20 people signed up to speak at the hearing, including members of law enforcement and the community. A significant amount of the testimony centered around two bills – [Senate Bill 6](#) and [Senate Bill 8](#) – that would make changes to the bail system.

The legislation comes after Indianapolis saw another [record-breaking year for homicides](#), with 271 people killed in 2021.

Senate Bill 6 aims to tighten bail rules for those charged with violent crimes. If passed, defendants charged with violent crimes would not be able to solicit help from bail bond companies unless their bail was higher than the minimum bail amount. If their bail is at or under that amount, they would be responsible for paying 100% of the bail themselves and may only seek financial help from a close relative.

Senate Bill 8 would create more regulations for nonprofit bail organizations, like the Bail Project, which aims to help low-income individuals pay bail. The Bail Project came under scrutiny after individuals whose bonds were paid by the organization went on to commit further crimes.

The bill would prevent nonprofit bail organizations from paying bail for those facing felony charges. It would also limit the amount of bonds the organizations can pay for misdemeanor charges, and cap those payments at \$2,000.

Sen. Aaron Freeman (R-Indianapolis), the bill's author, said the legislation does not just target the Bail Project, but nonprofit bail organizations as a whole.

Nikki Sterling's 24-year-old son Dylan McGinnis was allegedly killed in October by a man who was out on bail after receiving help from the Bail Project. Sterling said she is in support of the bill and wants nonprofit bail organizations to be held accountable.

"Sadly, it's the very communities they claim to be advocating for that are now in harm's way by having these dangerous individuals back put on the street," she said.

Several people testified at the hearing that both the bills are inequitable, and unfairly punish the poor who cannot pay their bail.

Monica Smith, of the Vera Institute of Justice, said the bills do not reflect data driven or evidence-based community priorities for violence reduction.

"The bail will reinforce that there are two systems of justice, one for the rich and one for the poor," Smith said.

Senate Bill 6's author, Sen. Michael Young (R-Indianapolis), said he does not believe the bills are inequitable, adding that he thinks wealthy individuals aren't committing violent crimes.

Additionally, multiple members of Indianapolis' justice system testified that the bills override the discretion of judges and lawyers.

"This does create an issue with separation of powers or infringement on the judiciary," said Michael Moore, assistant executive director of the Indiana Public Defenders Council. "This crosses over into the function of what judges do, who are there, closer to the facts, and make these determinations."

Jeff Clayton, executive director of the American Bail Coalition, testified that instead of looking just at the defendant's charges to determine what their bail should be, the system should take other factors into consideration to determine if the defendant is at risk for reoffending or not appearing in court.

The bills received support from members of law enforcement, including the Indianapolis Fraternal Order of Police President Rick Snyder, who said that the current homicide numbers are disturbing and change needs to be made.

The senators also heard testimony on three other bills, which would create pilot programs in Indianapolis to address crime and establish stricter protocols for those on electronic monitoring.

The committee is expected to make amendments to the bills and vote on them next week.

Contact WFYI criminal justice reporter Katrina Pross at kpross@wfyi.org. Follow on Twitter: [@katrina_pross](https://twitter.com/katrina_pross).

Pross is a Corps Member of [Report for America](#), an initiative of [The GroundTruth Project](#).

Tuesday, January 11, 2022



BAIL BILLS TAKE AIM AT INDY CRIME RATE; CRITICS ARGUE IT MISSES

(INDIANAPOLIS) – Some Indianapolis state senators' attempt to fight crime through bail reform has opponents arguing they're aiming at the wrong target.

The five Republicans who represent parts of Indianapolis in the Senate have introduced a package of five bills aimed at bringing Indy's record murder rates under control. But the bills authored by Senators Michael Young and Aaron Freeman were the main focus of a sometimes heated four-hour committee hearing.

Young's bill would set a minimum \$20,000 bail for violent crimes, unless counties have crafted their own bail schedules, and would require bail to be paid by cash, not bonds. Freeman's bill would set a similar cash bail requirement for bail charities like The Bail Project, and would ban them from posting bail for felonies. That bill would also prohibit state or local governments from funding bail. The Marion Superior Court cut off a grant for The Bail Project last month, saying the group needs to deliver a list of who it's bailed out and how many of them committed new crimes while out on bond.

Freeman reeled off a list of 10 defendants released on bail who went on to be charged with murder or other violent crimes. One of those defendants, Travis Lang, posted bond on a burglary charge last January with help from The Bail Project, and is now charged with the murder of 24-year-old Dylan McGinnis in Indianapolis nine months later.

McGinnis's mother, Nikki Sterling, told senators the goal of aiding people jailed on minor charges who can't afford bail is a noble one, but says in freeing those charged with violent crimes, groups like The Bail Project are hurting the communities they're trying to help.

But opponents, including senators from both parties, argue both bills would create a system where the constitutionally guaranteed right to bail would be available only to the well-off. Bail bondsmen argue the cash bail requirement is misguided, because bondsmen have arrest powers to bring back defendants who don't show up for court. And American Bail Coalition executive director Jeff Clayton says while his group supports the principle of setting higher bonds for violent crimes, it's a mistake to link bail strictly to the charge a prosecutor decides to file. He says the biggest factor by far should be a defendant's criminal history.

Indianapolis Senator Greg Taylor (D) argues the bills don't address the problem they're trying to solve. He says of 80 suspects now awaiting trial for murder in Marion County, two-thirds of them have priors not for violent crimes, but nonviolent ones, which Young's bill doesn't address. And he says of nearly a thousand defendants who got help from The Bail Project over the last three years, 95% met the conditions of their release.

Indianapolis Fraternal Order of Police president Rick Snyder responds the Bail Project figures don't include the last two years — that's the data the courts say the group has failed to deliver. And Snyder says while offenders out on bail may represent only a small portion of Indy's record murder totals, they're cases which cause extra pain to families because the court system could have prevented them.

LaGrange Senator Susan Glick (R), a former prosecutor, argues there's a more fundamental problem with the bail proposals. She says the issue isn't who posts bail, but how much it is. That's determined by judges, and Glick says Young's bill to set a floor for bail would deprive judges of the discretion to set bail by analyzing the facts of individual cases. And she notes just because someone's been charged doesn't mean they're guilty.

Freeman is a co-sponsor of Young's bill, along with Indianapolis Senator Jack Sandlin. Indianapolis Senator Kyle Walker and Greenfield Senator Mike Crider are co-sponsors of Freeman's bill. Each of the five senators is the lead author for one of the five bills in the package.

The other three bills would create a half-million-dollar crime-reduction grant fund for Marion County police agencies, encourage cooperation among 16 police and security agencies in the county, and set requirements to ensure defendants released with electronic monitoring are actually monitored. Those bills sparked little opposition or discussion.

The committee plans to vote on the bills next week.

Tuesday, January 11, 2022

Senate proposal would require additional oversight for The Bail Project



By: [Vic Ryckaert](#)

INDIANAPOLIS — The mother of a [young man gunned down in Indianapolis last fall](#) urged state lawmakers to approve a measure that increases oversight of The Bail Project and similar organizations.

"My son Dylan McGinnis was murdered in the most senseless tragic and horrific way. The world was robbed of one of its truly special gifts," Nikki Sterling said, weeping as she testified Tuesday before the Indiana Senate Committee on Corrections and Criminal Law.

McGinnis, Sterling's 24-year-old son, was shot to death on Oct. 1, 2021.

The man charged with murder in McGinnis' death, Travis Lang, was free on bail in connection with a cocaine possession charge.

Some of Lang's bail money was funded by The Bail Project.



Vic Ryckaert/WRTV

Nikki Sterling, Dylan McGinnis' mother.

Sterling urged the panel to approve Senate Bill 8. The measure, authored by Sen. Aaron Freeman, R-Indianapolis, requires charitable bail organizations to register with the Department of Insurance, caps the bails they fund at \$2,000 and bars the groups from bailing out anyone accused of a felony.

It was one of five Republican-sponsored bills discussed in the committee aimed at fighting violent crime in Indianapolis and across the state. Other proposals would increase monitoring of defendants on pre-trial release; fund police overtime for additional patrols in high-crime areas; and require courts to go through additional steps before granting bail to defendants.

The Bail Project launched in Indianapolis in 2018 and pays bonds for people who don't have the money.

It's posted bail for nearly 1,000 low-income defendants; the average bail amount was \$2,130; and clients appear for 95% of their court hearings, according to The Bail Project's 2021 report.

David Gaspar, The Bail Project's national director of operations, told the committee his group should be treated no differently than private bail bond agencies.

"Without our help, your constituents would have sat in jail before having their day in court while their lives outside, their families, their jobs crumbled," Gaspar said. "The services we provide the Hoosiers are free and come at no cost to the people we help, the government or the taxpayers."

Senate Bill 8, Gaspar said, ensures that more people will needlessly sit in jail simply because they are poor.

"Never mind that there is a presumption of innocence that is afforded to everyone accused of a crime or the fact that the for-profit bail industry can still bond out anyone who can afford their fees," Gaspar said.

The committee did not vote on the bill Tuesday.

The other bills discussed were:

Senate Bill 6: This bill, authored by Sen. Michael Young, R-Indianapolis, aims to reduce the number of violent offenders released on bail by requiring courts to review arrest warrants and hold open hearings. It also requires those arrested to pay the full minimum bail amount in cash.

Senate Bill 7: This bill, authored by Sen. Jack E. Sandlin, R-Indianapolis, establishes a Marion County crime reduction board that allows for more cooperation between police agencies.

Senate Bill 9: A bill authored by Sen. Kyle Walker, R-Lawrence, sets stricter standards and increases oversight for electronic monitoring and increases penalties for tampering with monitors. The measure allows for victims to be alerted if a person being monitored ranges outside designated areas.

Senate Bill 10: A bill authored by Sen. Michael Crider, R-Greenfield, establishes a pilot program to fund police overtime and additional services in high-crime areas.

The committee took no action on the crime bills Tuesday. It is expected to consider amendments during a hearing next week.

Tuesday, January 11, 2022



Credit: Nikki Sterling
Dylan McGinnis and his mother Nikki Sterling.

CRIME

Bill to limit The Bail Project gets backing from shooting victim's family

Senate Bill 8 would require state certification or limit The Bail Project to only helping two people every 180 days.

Author: Cierra Putman (WTHR)

INDIANAPOLIS — The mother of a Indianapolis shooting victim urged senators to pass a bill that would limit The Bail Project.

The man charged with murdering Nikki Sterling's son, Dylan, was out on bond with the help of the group.

"If I can help prevent this from happening to another family member, help prevent another mother from getting the same phone call that I received that night, I will push and I will fight to do that," said Sterling.

Sterling now lives in Arizona, but traveled to Indianapolis to encourage lawmakers to take on the group.

Travis Lang is charged with Dylan's murder. At the time of the shooting, Lang was accused of other crimes, but was out on bond, in part, because of The Bail Project.

"As a mother, I just couldn't wrap my brain around how they select individuals to bail out of jail," she said.



Credit: Nikki Sterling
Dylan McGinnis

She now supports [Senate Bill 8](#). The bill would ban the group from receiving taxpayer money like the \$100,000 it received from the Central Indiana Community Foundation. It would also require state certification or limit the not for profit to only help two people every 180 days. The bill also says charity bail organizations can only help people facing a misdemeanor. It caps bail payments to \$2,000. A 2021 quarterly reports shows the group averages \$2,130 per client and the median amount it pays for bail is \$1,500.

The Bail Project said calls to limit what it can do are unfair. It argues it's goal is to help people who can't afford to pay to get out.

"We want to level that playing field," said David Gaspar, national director of operations for The Bail Project.

13Investigates asked the group if it would consider only helping Hoosiers with misdemeanors or low level felonies. It said no.

"Our condolences go out to the mother that you spoke to," Gaspar said. "For us, it's really about serving people and identifying where that individual is and the freedom that they're afforded due to the Constitution."

"One of the reasons why our state must set those regulations for them is because I don't see an initiative on their part to start making changes," Sterling said.

The Bail Project has bailed out nearly 1,000 Hoosiers since coming to Marion County in 2019.

The group only goes to work after a judge sets a cash bond. That's when a defendant has to pay the full bond amount. The project or a defendant may get the money back if everything is done correctly.

A judge could also set a surety bond. That's when you need a bail bondsman. A defendant ponies up at least 10 percent of the bond and doesn't get their money back.

Lang was out on both types of bonds.

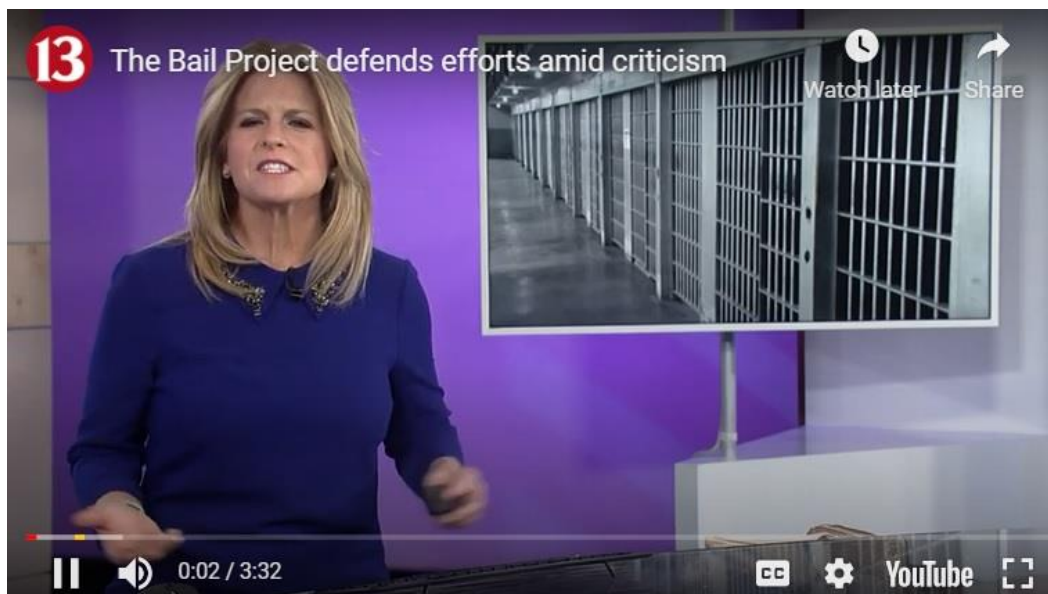


Credit: IMPD
Travis Lang

“We only ask for fairness,” Gaspar said. “If we’re going to be called out and we’re going to be asked about our decision in that case, why isn’t the bail bondsman?”

Sterling, as well as lawmakers and the police union, argue bail bondsmen are already regulated, unlike The Bail Project. However, no one who pays a cash bond is regulated. The defendant, a family member or stranger can pay a cash bond without regulation.

The Senate Corrections and Criminal Law Committee started hearing testimony on the bill on Tuesday and plans to continue to hear testimony when it meets again.





Indiana Lawmakers Crack Down on Bail Charities After Grisly Murders

KEVIN DALEY JAN 12, 2022 2:50 PM

Indiana lawmakers are working to crack down on bail charities after one such nonprofit sprung two defendants from jail who were subsequently charged with grisly murders.

Republican legislators have crafted a bill to regulate bail funds after local press reported that a national nonprofit called The Bail Project bonded out two accused offenders subsequently charged with homicides in Indianapolis. An Indiana state Senate committee on Tuesday heard testimony about the bill from Nikki Sterling, the mother of one of the people allegedly murdered by a Bail Project client.

"In principle, aiding an individual who stole food to feed their family is admirable," Sterling told the committee on Tuesday. "However, The Bail Project is bailing out offenders with violent criminal histories. And sadly, it's the very communities they claim to be advocating for that are now in harm's way by having these dangerous individuals back out on the street."

The Bail Project's Indianapolis clients who prompted the new legislation are Travis Lang and Marcus Garvin. Lang has been charged with the Oct. 1 shooting death of 24-year-old Dylan McGinnis, Sterling's son. The Bail Project and a for-profit bail bondsman helped Lang post a \$5,650 bond for a drug charge, despite prior felony prosecutions for burglary and resisting law enforcement.

Garvin is accused of murdering his girlfriend, 30-year-old Christie Lynn Holt. Garvin allegedly stabbed Holt 51 times because he suspected her of cheating on him, then attempted to dismember her body before disposing of it near a creek.

Garvin was out on a \$1,500 bond with an ankle monitor at the time of Holt's murder. He was arrested in December 2020 for stabbing a customer at a gas station where he worked the checkout counter. Garvin allegedly followed the customer out of the station's

convenience store, stabbed him in the back, and resumed checking out customers until authorities arrived, [according](#) to the *Indianapolis Star*.

Indianapolis is one of many American cities struggling against a surge of violent crime. It's a crisis of many causes. Some cities have poured huge sums into diversionary programs at the expense of law enforcement, while police grapple with the same staffing shortages plaguing the private sector. And many jurisdictions curtailed pretrial detention in the name of COVID mitigation, a boon for repeat offenders. Indianapolis set a record for murders in 2021, and more than 700 people were wounded in shootouts.

State senator Aaron Freeman (R.), the Indiana bill's author and lead sponsor, told the *Washington Free Beacon* that ending the crime wave is an economic as well as public safety imperative.

"We pride ourselves on being a welcoming place," Freeman said. "We've got to get our arms around this. If we don't, my fear is it's going to hurt the economic engine of this state."

The bill is one of the first legislative efforts in the nation to regulate bail charities. Donations to such organizations soared during the 2020 Floyd riots, fueled by Democratic politicians keen on helping demonstrators. But community bail funds vary in professionalism and operational capacity. Some have [drawn scrutiny](#) from charity watchdogs with their spotty reporting practices and cash-hoarding tendencies.

The Indiana bill would prevent funds from bailing out accused felons or defendants with means, limiting aid to "two thousand dollars or less for an indigent person charged with a misdemeanor." And if bail fund clients miss court appearances, their bond payments will be reassigned to the state's general fund, putting bail charities on the hook when their clients don't comply with their release terms.

That latter provision will force charitable bail funds to tighten up their operations. Many community bail funds are supported by volunteers led by a cadre of paid staff. They don't have the capacity to track client cases, ensure they obey their release terms, or hunt fugitives like a bail bondsman does. As such, they'll have to develop compliance practices and become more selective at posting bail, or face the consequences. Sterling highlighted that point during her testimony on Tuesday.

"The Bail Project operates without regulation, meaning that they can bail out whomever they want, regardless of the charge," Sterling said. "Furthermore, once out on bond, the offender is not accountable to the charitable bail organization, and the organization does not have any oversight of the offender once released."

Losing bail payments could undermine a bail fund's financial stability over time. Though many bail funds have multiple revenue streams, they usually count on bail payments they post coming back to the organization once a client's case has been resolved. Every bail payment lost can undercut their ability to help a future client.

The bill also forbids local and state governments from funding bail charities. It further requires bail funds to obtain certification from the state insurance commissioner, which

must be renewed every two years. The commissioner can decertify an organization if its staff misuses funds or engages in "fraud, dishonesty, or deception."

The Bail Project collected approximately \$250,000 in taxpayer dollars via an Indianapolis-funded crime prevention program administered by the Central Indiana Community Foundation.

David Gaspar, The Bail Project's national operations director, defended his organization to the committee on Tuesday and accused others of exploiting the McGinnis and Holt murders to advance an anti-reform agenda.

"The manner in which they have been politicized shows a double standard and a political agenda that must be acknowledged," he said. "What The Bail Project would like to talk to lawmakers about is how to reform the bail system so due process is not tied to how much money a person has."

The Bail Project has assisted nearly 1,000 low-income residents in the Indianapolis area since 2018, according to Gaspar.

Freeman, the bill's sponsor, said on balance the bill simply regulates bail charities in the same manner as for-profit bail bondsmen.

"In Indiana, our Department of Insurance regulates bail bondsmen, and that's what [bail charities] are doing," he told the *Free Beacon*. "Everyone should play by the same set of rules."

IndyStar.

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Republican worries crime bills package targeting Indianapolis is 'zeroing in on the poor'



Lawrence Andrea

Indianapolis Star

A package of five bills proposed by state Senate Republicans in response to rising violence in Indianapolis received pushback during a committee hearing Tuesday, with some questioning both the reach and constitutionality of portions of the measures.

Nearly two dozen people spoke for and against the series of bills, which would reshape how bail is administered for those accused of violent crimes, increase oversight of pretrial monitoring and zero-in on high-crime areas in Indianapolis. Authors of the bills claim the measures are aimed at "reducing crime in Marion County and the state as a whole."

Several state senators, judges and a number of attorneys questioned the restrictions the bills would place on bail during a passionate discussion that became tense at times.

Among the proposals in question Tuesday was Senate Bill 6, which would effectively eliminate the use of surety bonds for people accused of violent crimes. The bill, proposed by Sen. Michael Young, R-Indianapolis, would require someone charged with a crime to pay in full the minimum cash bail amount for "an offender's most serious offense."

Sen. Sue Glick, R-La Grange, during the hearing noted the legislation seems to be "zeroing in on the poor." Glick said the bill would mean only people with money would be able to afford bond, asking Young: "Only rich people with cash are going to get it, correct?"

"No," Young answered, "because there's no rich people in Marion County that's committing these crimes."

The legislation, Young said, was driven in part by recent instances in which people serving a post-conviction sentence or out on pretrial release were later accused of committing a homicide.

There are 1,475 people on pretrial electronic monitoring in Marion County, according to court officials who spoke at the hearing. Of those, 85% have not committed a new offense while on pretrial release, and 92% appear for their court dates.

Data from Marion County Community Corrections, which oversees post-conviction monitoring, indicates that of the 238 homicide suspects identified between March 2018 and February 2020 by Indianapolis police, 12 — about 5% — were on post-conviction monitoring.

'Constitutional concern'

Some questioned the constitutionality of requiring those accused of violent crimes to pay only cash bond. Other states, like Ohio, have previously found similar measures unconstitutional, the director of the American Bail Coalition, a trade association that underwrites bail bonds, noted. And an Indiana judge said the provision raises "a constitutional concern" over the right to bail.

Glick also took issue with a portion of the bill that holds only close family members can post bail for someone accused of violent crimes. The measure also would prevent the court from lowering bail past the amount laid out in a county's bail schedule. It seemed, Glick said, that legislators were taking their opinions and want to "substitute it for that of the judges and the prosecutors."

Others largely echoed those concerns, saying the bail regulations "create two classes of people." Representatives from the Indiana Public Defender Council and the Vera Institute of Justice, which advocates for alternatives to jailing, noted spending time in jail also could make someone more likely to reoffend.

Judge Mark Spitzer, a circuit court judge in Grant County, said the Indiana Judges Association is concerned the bill takes away judicial discretion. Judges "keep in mind the constitutional presumption of innocence" for those charged with crimes, Spitzer said, and consider the facts of different situations when deciding on bond. Mandating judges set a minimum bail, he suggested, limits them.

Senate Bill 8, authored by State Sen. Aaron Freeman, R-Indianapolis, aims to restrict how charitable bail funds help low-income people who are in custody and awaiting trial.

Notably, Freeman's bill prevents the nonprofit organizations from bailing out people accused of felonies — limiting them to depositing bonds of up to \$2,000 "for an indigent person charged with a misdemeanor."

Glick and Taylor, the Democratic senator, pushed back on the effort, with Glick asking why the bill targets charitable bail funds and does not include bail bondsmen, who also post bonds for people accused of violent crimes, and Taylor noting judges set the bonds that these organizations pay.

"I think all these bills are well intentioned," Glick said. "I just question some of the... you know, in the attempt to kill a gnat, I think we're using a cannon."

Future of Bail Project in question

Freeman said the bill does not target "any one organization" but said he started working on the bill when he learned that "public tax dollars were being given to charitable organizations for the purposes of bail."

The Bail Project, which began work in Marion County in 2018, received \$150,000 in city grants between 2019 and 2021, according to the mayor's office. Those funds, however, "were not directed towards paying direct cash bail for individuals," the office told IndyStar, and rather used for daily operations and wraparound services, like transporting clients to hearings and referring people to other services.

Marion Superior Court last month suspended support for that fund and requested The Bail Project provide them with up-to-date data. Marion Superior Judge Amy Jones on Tuesday told the Senate committee the project had shared general data through 2021.

The project will meet with the court in March to discuss its future in Marion County, at which time they will share more data about how many of their clients had pretrial release violations and data on referrals to wraparound services.

David Gaspar, the national director of operations for The Bail Project, noted he lived in Indianapolis and is "anchored" in the community. Senate Bill 8, he said, would "severely limit" the project's ability to help low-income Hoosiers.

"Like loved ones and churches, charitable bail funds rally to support your constituents when they're at risk of losing everything," Gaspar said.

Data from The Bail Project provided to the court and obtained by IndyStar indicate the project has posted bail for 980 Hoosiers. Of those, 94.7% of people appeared for their court dates, and 84% served no additional jail time. One in five people supported by The Bail Fund had their cases dismissed or were found not guilty at trial.

Nearly 70% of The Bail Projects clients were accused of misdemeanors and low-level felonies, the data show. The group only intervenes, Gaspar said, once they have assessed a person's needs "and determined we can meet them," providing court reminders and, sometimes, transportation.

Still, the bills saw support from a number of law enforcement officials, who emphasized Indianapolis' staggering crime statistics, which included a record 271 homicides in 2021.

Senators will consider amendments to the bills next week.

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Thursday, January 13, 2022

Topic of bail reform in Indiana garners opinions from all sides

By Jon Zimney



("Prison Bars Jail Cell" by Jobs For Felons Hub, CC BY 2.0)

Some Indianapolis state senators' attempt to fight crime through bail reform has opponents arguing they're aiming at the wrong target.

The five Republicans who represent parts of Indianapolis in the Senate have introduced a package of five bills aimed at bringing Indy's record murder rates under control. But the bills authored by Senators Michael Young and Aaron Freeman were the main focus of a sometimes heated four-hour committee hearing.

Young's bill would set a minimum \$20,000 bail for violent crimes, unless counties have crafted their own bail schedules, and would require bail to be paid by cash, not bonds. Freeman's bill would set a similar cash bail requirement for bail charities like The Bail Project, and would ban them from posting bail for felonies. That bill would also prohibit state or local governments from funding bail. The Marion Superior Court cut off a grant for The Bail Project last month, saying the group needs to deliver a list of who it's bailed out and how many of them committed new crimes while out on bond.

Freeman reeled off a list of 10 defendants released on bail who went on to be charged with murder or other violent crimes. One of those defendants, Travis Lang, posted bond on a burglary charge last January with help from The Bail Project, and is now charged with the murder of 24-year-old Dylan McGinnis in Indianapolis nine months later.

McGinnis's mother, Nikki Sterling, told senators the goal of aiding people jailed on minor charges who can't afford bail is a noble one, but says in freeing those charged with violent crimes, groups like The Bail Project are hurting the communities they're trying to help.

But opponents, including senators from both parties, argue both bills would create a system where the constitutionally guaranteed right to bail would be available only to the well-off. Bail bondsmen argue the cash bail requirement is misguided, because bondsmen have arrest powers to bring back defendants who don't show up for court. And American Bail Coalition executive director Jeff Clayton says while his group supports the principle of setting higher bonds for violent crimes, it's a mistake to link bail strictly to the charge a prosecutor decides to file. He says the biggest factor by far should be a defendant's criminal history.

Indianapolis Senator Greg Taylor (D) argues the bills don't address the problem they're trying to solve. He says of 80 suspects now awaiting trial for murder in Marion County, two-thirds of them have priors not for violent crimes, but nonviolent ones, which Young's bill doesn't address. And he says of nearly a thousand defendants who got help from The Bail Project over the last three

years, 95-percent met the conditions of their release.

Indianapolis Fraternal Order of Police president Rick Snyder responds the Bail Project figures don't include the last two years — that's the data the courts say the group has failed to deliver. And Snyder says while offenders out on bail may represent only a small portion of Indy's record murder totals, they're cases which cause extra pain to families because the court system could have prevented them.

Lagrange Senator Susan Glick (R), a former prosecutor, argues there's a more fundamental problem with the bail proposals. She says the issue isn't who posts bail, but how much it is. That's determined by judges, and Glick says Young's bill to set a floor for bail would deprive judges of the discretion to set bail by analyzing the facts of individual cases. And she notes just because someone's been charged doesn't mean they're guilty.

Freeman is a co-sponsor of Young's bill, along with Indianapolis Senator Jack Sandlin. Indianapolis Senator Kyle Walker and Greenfield Senator Mike Crider are co-sponsors of Freeman's bill. Each of the five senators is the lead author for one of the five bills in the package.

The other three bills would create a half-million-dollar crime-reduction grant fund for Marion County police agencies, encourage cooperation among 16 police and security agencies in the county, and set requirements to ensure defendants released with electronic monitoring are actually monitored. Those bills sparked little opposition or discussion.

The committee plans to vote on the bills next week.



Mother of 24-Year-Old Murdered by Bailed Out Accused Felon: Joe Biden, Kamala Harris Should Put Themselves in My Shoes



By [JOHN BINDER](#) | 15 Jan 2022

The mother of 24-year-old Dylan McGinnis, who was allegedly murdered by an accused felon that had been bailed out of jail by the left-wing “Bail Project” organization, says President Joe Biden and Vice President Kamala Harris ought to put themselves in the shoes of crime victims.

In an exclusive interview with SiriusXM Patriot’s *Breitbart News Saturday*, McGinnis’s mother Nikki Sterling, described the murder of her son in Indianapolis, Indiana, on October 1, 2021 — allegedly by 23-year-old Travis Lang, an accused felon, who was able to post bail with the help of the left-wing Bail Project [which features](#) celebrities like Richard Branson, Danny Glover, and John Legend on its advisory board.

“Dylan was such a vibrant young man,” Sterling said. “He really had a passion for his friends and his family. He was happy-go-lucky. He loved life. He was humble. He found joy in helping other people, whether it be his grandparents, his friends. He had a beautiful soul.”

“[Dylan] had been assisting a friend through a substance abuse issue and was essentially put in the middle of a situation that placed him with her and Travis Lang, the man who shot my son,” Sterling said.

“He should have never been allowed to be back on the streets. Travis Lang was in jail on three pending felonies and I believe he had one felony on his record,” she continued. “So a total of four felonies, three pending. One was for resisting law enforcement. Another was for the possession of narcotics and the third one for burglary.”

Local Indianapolis media [reported](#) the details of Lang’s criminal record:

Lang’s wrap sheet dates back to 2018 and **consists of pending charges related to auto theft, burglary, resisting law enforcement, and multiple drug-related charges.** [Emphasis added]

He was arrested in December [2020] for possession of cocaine, a Level 6 felony. Court documents show in January [2021] his \$5,000 cash bond was paid by The Bail Project. [Emphasis added]

According to investigators, **Lang was a known drug dealer** in the area. Following his January bond release, police said **he would go on to continue to sell drugs leading to the murder of Dylan McGinnis** on Oct. 1. [Emphasis added]

Lang’s bail was just \$5,000 and fully paid for by the Bail Project. Sterling said that although jailbreak organizations like the Bail Project fund a suspect’s release, they are not held accountable for any future crimes committed by that suspect or any oversight in the suspect’s pending case.

Even more, Sterling has learned that American taxpayer money is being used to help fund jailbreak operations like bailing out accused felons.

In response to Lang’s alleged murdering McGinnis, Bail Project executive David Gaspar said Lang “had no history of violence” despite the felony charges. Gaspar offered no condolences at the time to McGinnis’s family.

“The Bail Project – Indianapolis successfully supported him in returning to all of his court dates for his pending cases,” Gaspar said in a statement. “It’s important to remember that Mr. Lang is only charged with the current allegations, and it will be up to a judge and jury to determine if those charges have any merit.”

Meanwhile, Sterling said she and her family “were just in complete shock.”

“We didn’t hear that [Travis Lang] had been in jail on three pending felonies until three weeks after the accident had happened ... we were just in complete shock of how these organizations are allowed to just go in and bail out whoever they want,” Sterling said. “They indicate that their mission is to fight incarceration by bailing out low-income individuals but many statements I’ve seen on television made by the organization ... is that they don’t actually look at the offender’s criminal history before they bail them out of jail.”

Sterling said that while she has spoken to Indiana legislators and Sen. Mike Braun (R-IN) about her son’s murder, she has yet to hear from Biden and Harris.



Dylan McGinnis (Photo via Facebook)

While running for president, Biden championed a [plan to end cash bail](#) across the United States while Harris propped up jailbreak organizations that had been [helping free](#) convicted domestic abusers.

Sterling said the president and vice president ought to walk in her shoes for a day.

“Until a family, Kamala’s family, or any celebrity’s family is directly impacted by an offender who has been bailed out, and I can assure that with the numbers of offenders who are being bailed out ... it will eventually hit home for somebody at the advisory board level,” Sterling said.

“I do know that Joe Biden has unfortunately lost a child and it’s one of the hardest things that an individual, especially a parent and a mother, could ever go through,” she continued. “Take off your political shoes and put yourself into ... think on a compassionate level for your child. Would you want the offender that is being released by any charitable bail organization, would you want them to invite them into your house for dinner to expose them to your children? Would you want your children to cross paths with them?”

In Indiana, State Sen. Aaron Freeman (R-Indianapolis) has taken notice of McGinnis’s case and is currently pushing for [legislation](#) that would ban groups like the Bail Project from bailing out suspects accused of felonies and would restrict the amount they can pay to \$2,000 or less.

Sterling said she is testifying in support of the legislation next week. Americans around the nation, Sterling said, can also help by calling up their state legislators and demanding similar legislation to that of Freeman’s.

“If you look at the increasing crime in Indiana, it increased 59 percent and they were at their all-time high homicides in 2021 and you’re starting to see that across the United States ... my fear is that you’re going to see more and more of these offenders get released and pushed back into the streets before regulations can be established,” Sterling said.

“Our entire family ... we’re broken, we’re shattered,” she continued.

John Binder is a reporter for Breitbart News. Email him at jbinder@breitbart.com. Follow him on Twitter [here](#).



Bail 'charities' facing crackdown after 2 freed suspects accused of murder

Legislative plan would put them under oversight, like commercial bail bondsmen

By [Bob Unruh](#)

Published January 15, 2022 at 4:59pm



Lawmakers in Indiana are working on a plan to crack down on "charities" that raise bail money for suspects in jail to free them pending trial after two such suspects were let out from behind bars only to subsequently be charged with grisly murders.

The issue has been in the news ever since Kamala Harris famously advocated for people to donate to funds that were working to free suspects in the riots that ravaged American cities following the death in Minneapolis of George Floyd.

The [Free Beacon explained the situation in Indiana, in that GOP lawmakers have assembled a plan that would regulate bail funds.](#)

It comes after reports revealed how an organization called The Bail Project bonded out two offenders facing charges – and they then were charged with homicides.

One committee heard testimony this week from Nikki Sterling, the mother of one of the victims, the report explained.

"In principle, aiding an individual who stole food to feed their family is admirable," she told lawmakers. "However, The Bail Project is bailing out

offenders with violent criminal histories. And sadly, it's the very communities they claim to be advocating for that are now in harm's way by having these dangerous individuals back out on the street."

The defendants who triggered the crisis, the report said, are Travis Lang and Marcus Garvin.

"Lang has been charged with the Oct. 1 shooting death of 24-year-old Dylan McGinnis, Sterling's son. The Bail Project and a for-profit bail bondsman helped Lang post a \$5,650 bond for a drug charge, despite prior felony prosecutions for burglary and resisting law enforcement," the Free Beacon reported.

Meanwhile, Garvin allegedly killed his girlfriend, Christie Lynn Holt, 30, by stabbing her 51 times and trying to dismember her body. He was out on a \$1,500 bond at the time, after being accused of stabbing a customer at a gas station where he worked.

"Indianapolis is one of many American cities struggling against a surge of violent crime. It's a crisis of many causes. Some cities have poured huge sums into diversionary programs at the expense of law enforcement, while police grapple with the same staffing shortages plaguing the private sector. And many jurisdictions curtailed pretrial detention in the name of COVID mitigation, a boon for repeat offenders. Indianapolis set a record for murders in 2021, and more than 700 people were wounded in shootouts," the report documented.

The sponsor of the crackdown plan, Sen. Aaron Freeman, a Republican, said the public safety and economic imperatives both are being addressed.

"We've got to get our arms around this. If we don't, my fear is it's going to hurt the economic engine of this state," he told the Free Beacon.

The bill would prevent the charities from helping those accused of felonies, allowing aid only up to \$2,000 for people charged with a misdemeanor.

"And if bail fund clients miss court appearances, their bond payments will be reassigned to the state's general fund, putting bail charities on the hook when their clients don't comply with their release terms," the report said.

The plan also prevents local and state governments from funding those bail charities, and would require them to be certified by the state insurance commissioner.

Freeman said the plan simply provides the same oversight for bail charities as the state already has for commercial bail bondsmen.

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THE INDIANA LAWYER

Indiana Senate committee advances crime bill package

January 20, 2022 | [Jordan Morey](#)

The Senate Corrections and Criminal Law Committee has endorsed five criminal justice bills aimed at reducing violent crime.

Amended versions of Senate Bills 6, 7, 8, 9 and 10 each passed the Senate committee on Tuesday, sending them to the full Senate for consideration. They were not on the Senate's second reading calendar for Thursday at IL deadline.

Last week, the committee heard four hours of testimony on the bills. Among those to testify on Jan. 11 included representatives from the Indiana Judges Association, Indianapolis Metro Police Department, American Bail Coalition and other stakeholders, as well as citizens such as a mother whose son was murdered last year.

[SB 6](#) deals with bail for violent arrestees, defining a "violent arrestee" and the "minimal bail amount." The bill would require a court to review the probable cause affidavit or arrest warrant before releasing a violent arrestee on bail; bail to be set following a hearing in open court; and a violent arrestee released on bail to pay 100% of the minimum bail amount by cash deposit.

During testimony last week, Grant Circuit Judge Mark E. Spitzer, representing the Indiana Judges Association, expressed concerns that the bill would impact judicial discretion and could also have constitutional issues.

Some criticism has also come from the fact the bill, which passed by a 7-2 vote, is written by a group of senators from Indianapolis: Sens. Mike Young, Jack Sandlin and Aaron Freeman, all Republicans.



Sen. Rodney Pol

"The issue I particularly see is there are 90-some-odd other counties that could address this at the ballot box as opposed to through state legislation," Sen. Rodney Pol Jr., D-Ogden Dunes, said Tuesday. "When I look at this, I understand exactly what the intent is and could see this as steps ... for Marion County. It does concern me that it essentially does remove a lot of discretion for judges outside of Marion County and essentially imposes what is a Marion County fix on the rest of the state and the judges across the state."

Sen. Sue Glick, R-La Grange, said last week that it appeared the bill targeted the poor.

[SB 8](#), which also passed 7-2 on Tuesday, deals with nonprofit bail funding. It would allow a charitable organization to pay bail on behalf of a defendant if the organization meets certain criteria — including that defendants charged with a felony would not be able to receive bail assistance from a nonprofit.

Voting against SB 8, Senate Minority Leader Greg Taylor, D-Indianapolis, said the bill “clearly” makes a distinction between charitable bail organizations and for-profit organizations.

“I think that’s a dangerous precedent for this committee to make,” he said. “... My discussions, although outside of the discussion the author may have had with the judges, is that in a lot of these cases there is a combination of surety bail for for-profit entities as well as charitable organizations.



Sen. Greg Taylor

“The problem that we’re creating here is, what if there’s a combination?” Taylor continued. “Let’s say the surety is paid partly by a for-profit bail entity and then the charitable bail organization actually pays the remainder amount. We don’t have anything in this legislation that would handle that situation, and that’s the problem with creating a different system for these two. I think this legislation, even with the changes the author (Freeman, Sen. Kyle Walker, Sen. Michael Crider) made, is going to make it more difficult for people to get out on bail.”

[SB 10](#), which would establish a Marion County violent crime reduction pilot project, passed by a 9-0 vote.

Relatedly, [SB 7](#) would create the Marion County crime reduction board as part of the pilot project. That bill passed 6-2.

Sen. Mike Bohacek, R-Michiana Shores, noted on SB 10 that he wished it would extend to other counties like St. Joseph, as it has also seen an increase in violence like “any urban area.”

[SB 9](#), which establishes electronic monitoring standards, passed 9-0.



States Crack Down on Radical Bail Group Helping Free Violent Criminals

Posted to [Politics](#) January 23, 2022 by [Margaret Menge](#)

The state legislature in Indiana is looking to stop judges from reducing bail for violent criminals to next to nothing. It's also looking to stop a charitable bail organization from stepping in to pay for the release of criminals back onto Indianapolis' streets.

It's part of a national pushback against bail reforms sparked by high-profile cases like Darrell E. Brooks, who had been out of jail for just five days when he killed six people by plowing his car into a Christmas parade in Waukesha, Wisconsin in November,

A bill introduced this month by Indiana state Sen. Mike Young (R-Indianapolis) would prohibit judges from reducing bail for a violent offense, requiring they stick to the bail schedule in place in their county. For a second violent offense, bail would double.

The proposal, Senate Bill 6, would also require bail to be paid in cash for a violent offense, and paid by the person charged or by his immediate family. That would stop nonprofit groups like The Bail Project from posting bail to spring violent offenders.

"The Indiana Constitution is pretty clear that bail, except for murder, is available to our citizens, but it doesn't say it has to be easy to obtain," said Young at a hearing on his bill on January 11. "And we're going to make sure it's not easy to obtain, because Indianapolis and Marion County [and] our citizens are safer when they're [criminals] in jail awaiting their trial than out on our streets."

Indiana isn't alone. In neighboring Kentucky, state representatives have introduced a bill seeking to make charitable or crowdfunded bail organizations illegal.

And in Wisconsin, Republican lawmakers are pushing legislation to keep more violent offenders behind bars until their trials. And Democratic Gov. Tony Evers, facing a competitive election later this year, has also signaled he's open to tightening bail requirements.

"Wisconsin lives are in danger because of the low bail that soft-on-crime judges and DAs are currently setting," state Sen. Julian Bradley, R-Franklin, said in a [statement](#) this month. "This revolving door for criminals must end."

Indianapolis has been reeling from a spate of recent horrific crimes committed by violent criminals who had been released on pre-trial bond, with their bail paid for by The Bail Project. It is a national organization that employs "bail disruptors" in cities across the country, including Indianapolis.

One was Marcus Garvin, who stabbed another man at a Circle K gas station because he was angry the man was taking too long in the bathroom. His bond was reduced from \$30,000 to \$1,500 by Marion County Superior Court Judge Shatrese Flowers, and The Bail Project paid it, allowing Garvin to walk free wearing an ankle monitor.

A few months later, on July 30, 2021, Garvin killed his longtime girlfriend, Christie Holt, in a seedy hotel room and was caught on surveillance camera dragging her body into the woods, wrapped in a sheet.

At a Senate hearing earlier this month, a woman in a black dress stood up to give public testimony.

“I’m here to represent my son,” she said. “He was the 200th homicide in Indianapolis.”

The woman, Nikki Sterling, is the mother of Dylan McGinnis, who was gunned down at age 24 while he accompanied a friend who was buying drugs from a drug dealer.

“Dylan loved his family, his friends, the broken, the outcast, and the perfect stranger, and there are no words that can express the amount of our heartbreak and pain,” Sterling told the members of the Indiana Senate’s Corrections and Criminal Law Committee. “Added to my pain was the shock of learning that his alleged shooter and known violent offender, Travis Lang, had been bailed out of jail on a \$5,000 bond with pending felonies by a charitable bail organization called The Bail Project.”

The Bail Project began operating in Indiana in 2018, and at first, focused on bailing out only nonviolent offenders. But that changed more than a year ago when the organization started helping spring people accused of burglary, assault, and even attempted murder.

But The Bail Project always had a political agenda. On its website, it makes clear that it has a problem with the criminal justice system, and with keeping people who have committed crimes behind bars.

“The Bail Project combats mass incarceration by disrupting the money bail system – one person at a time,” its mission statement says. “We restore the presumption of innocence, reunite families, and challenge a system that criminalizes race and poverty. We’re on a mission to end cash bail and create a more just, equitable, and humane pretrial system.”

Rick Snyder, head of the Indianapolis chapter of the Fraternal Order of Police, has been railing against the “revolving door of criminal justice” in his city for at least two years.

“Here’s what I’ve come to realize,” he told the Senate committee. “And I’ve said this publicly: it’s coming to a neighborhood near you.”

About the Author



[Margaret Menge](#)

Margaret Menge is a freelance journalist who's written for the Columbia Journalism Review, New York Observer, Miami Herald, The American Conservative, among other publications. She wrote this for InsideSources.com.



Mother – whose son was murdered by an alleged felon bailed out by the Bail Project – rages against Biden, Harris

Posted by: [Chris Elliot](#) | [January 25, 2022](#)

WASHINGTON, D.C.- In an exclusive [interview](#) with SiriusXM Patriot's *Breitbart News Saturday*, the mother of 24-year-old Dylan McGinnis, Nikki Sterling, said that President Joe Biden and Vice President Kamala Harris should put themselves in the shoes of crime victims.

Her son, 24-year-old Dylan, was allegedly murdered by an accused felon that had been bailed out of jail by the left-wing "Bail Project" [organization](#).

During the interview, Sterling described the murder of her son, which took place on October 1, 2021 in Indianapolis, Indiana.

The alleged murderer, 23-year-old Travis Lang was an accused felon at the time and was able to post bail with the help of the Bail Project, which features celebrities like Richard Branson, Danny Glover, and John Legend on its advisory board. Sterling said:

"Dylan was such a vibrant young man. He really had a passion for his friends and family. He was happy-go-lucky. He loved life. He was humble. He found joy in helping other people, whether it be his grandparents, his friends. He had a beautiful soul."

Sterling added:

"[Dylan] had been assisting a friend through a substance abuse issue and was essentially put in the middle of a situation that placed him with her and Travis Lang, the man who shot my son."

He should have never been allowed to be back on the streets. Travis Lang was in jail on three pending felonies and I believe he had one felony on his record."

She continued:

"So, a total of four felonies, three pending. One was for resisting law enforcement. Another was for the possession of narcotics and the third was one for burglary."

Back in October 2021, a local Indianapolis media outlet [reported](#) the details of Lang's criminal record.

Lang was charged in early October 2021 with a shooting that killed one man and injured a woman.

His rap sheet dates back to 2018 and consists of pending charges related to auto theft, burglary, resisting law enforcement, and multiple drug related charges.

He was arrested in December 2020 for possession of cocaine, a level 6 felony.

Court documents show that in January 2021, his \$5,000 cash bond was paid by the Bail Project. According to investigators, Lang was a known drug dealer in the area.

Following his January 2021 bond release, police said he would go on to continue to sell drugs leading to the murder of McGinnis on October 1, 2021. When asked about Lang's case, the Bail Project sent a statement to News 8:

“The Bail Project- Indianapolis paid a portion of Mr. Lang’s bail nine months ago and his family paid a portion through a bail bonds agent.

Mr. Lang has a very supportive family and had no history of violence. The Bail Project- Indianapolis successfully supported him in returning to all of his court dates for his pending cases.

It’s important to remember that Mr. Lang is only charged with the current allegations and it will be up to a judge and jury to determine if those charges have any merit.”

Sterling said that although organizations like the Bail Project fund a suspect's release, they are not held accountable for any future crimes committed by that suspect or any oversight in the suspect's pending case.

Sterling has also learned that American taxpayer money is being used to help fund “get-out-of-jail” operations like bailing out accused felons. After his statement from the Bail Project, executive David Gaspar offered no condolences at the time to the McGinnis' family.

Sterling said she and her family were “just in complete shock.” She added:

“We didn’t hear that [Travis Lang] had been in jail on three pending felonies until three weeks after the accident had happened ... we were just in complete shock of how these organizations are allowed to just go in and bail out whoever they want.”

She said:

“They indicate that their mission is to fight incarceration by bailing out low-income individuals, but many statements I’ve seen on television made by the organization ... is that they don’t actually look at the offender’s criminal history before they bail them out of jail.”

Sterling said that she has spoken to Indiana legislators and Sen. Mike Braun (R-IN) about her son's murder, she has yet to hear from Biden and Harris.

Sterling said the president and vice president ought to walk in her shoes for a day. Sterling added:

“Until a family, Kamala’s family, or any celebrity’s family is directly impacted by an offender who has been bailed out and I can assure that with the numbers of offenders who are being bailed out ... it will eventually hit home for somebody at the advisory board level.”

She continued:

“I do know that Joe Biden has unfortunately lost a child and it’s one of the hardest things that an individual, especially a parent and a mother, could ever go through.

Take off your political shoes and put yourself into ... think on a compassionate level for your child.

Would you want the offender that is being released by any charitable bail organization, would you want them to invite them into your house for dinner to expose them to your children?

Would you want your children to cross paths with them?”

In Indiana, State Se. Aaron Freeman (R-Indianapolis) has taken notice of McGinnis' case and is currently pushing for [legislation](#) that would ban groups like the Bail Project from bailing out

suspects accused of felonies and would restrict the amount they can pay to \$2,000 or less. Sterling said in a statement:

“If you look at the increasing crime in Indiana, it increased 59 percent and they were at their all-time high homicides in 2021 and you’re starting to see that across the United States ... my fear is that you’re going to see more and more of these offenders get released and pushed back into the streets before regulations can be established.”

She said:

“Our entire family ... we’re broken, we’re shattered.”

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Tuesday, January 25, 2022

POLITICS

Indiana Senate approves new restrictions on nonprofit bail groups



by: Garrett Bergquist

INDIANAPOLIS (WISH) — The mother of a murder victim on Tuesday said she is certain [new legislation](#) would have saved her son's life.

Nikki Sterling's son, Dylan McGinnis, was murdered Oct. 1. Police said the suspect was out on bond at the time while awaiting trial for possession of cocaine, a level 6 felony. Court documents show his \$5,000 bond was paid in January of 2021 by The Bail Project, a national nonprofit.

It was the second time in three months a suspect had murdered someone in Marion County after The Bail Project covered their bond. After McGinnis' death, Sterling began lobbying lawmakers to tighten the rules for such groups.

- [Docs: Man on GPS monitoring awaiting trial for stabbing now accused in girlfriend's murder](#)
- [2nd man accused of murder after leaving jail with Bail Project's help](#)

On Tuesday afternoon, the state Senate approved legislation to impose new rules on nonprofit bail organizations. Under the bill, nonprofits could only cover bail for misdemeanors, and then only if the courts set the amount at \$2,000 or less.

In addition, any person or organization that bails out more than two people in a six-month period would have to be licensed and regulated

by the Indiana Department of Insurance, much the same as traditional bail bond agencies are.

Sterling said her advocacy since her son's death has given her a sense of purpose. She said blocking nonprofits from bailing out felony suspects will prevent other families from facing what she has gone through.

"If I can impact somebody else's life, help another mother, stop another mother from getting the same phone call I received that night, then I'll feel like I fulfilled [McGinnis'] legacy of helping others," she said.

The Bail Project's operations director, David Gaspar, said the organization has made changes after McGinnis' death but writing new rules into state law is the wrong way to address the problem. He said a traditional bond agency covered the surety bond for the suspect in that case and The Bail Project simply covered the rest.

Gaspar said the regulations will be moot anytime a suspect's family has the means to bail them out on their own.

"Without our work here, there's not a level playing field for those who are impoverished," he said. "The question is not about The Bail Project's work. It's about the process here in Indiana and across our nation of a constitutional right to bond."

Earlier in the day, before the Senate's vote, both Gaspar and Sterling spoke to a House committee which approved a similar bill. The Senate's vote sends the upper chamber's version of the bill to the House.



[Investigations](#)

The Bail Project responds to questions over who it bails out



by: [Courtney Crown](#)

Posted: Feb 7, 2022 / 10:00 PM EST / Updated: Feb 8, 2022 / 04:18 AM EST

INDIANAPOLIS — The Bail Project paid to release at least three people who allegedly went on to commit heinous crimes, including [murder](#) and [stabblings of officers](#), while awaiting trial for prior offenses. [At the request of Marion Superior Court judges](#), the Bail Project is investigating how many of their clients re-offended while out on release.

“There’s no uniform system in Indiana that allows anybody to look at that data and that information,” David Gaspar, National Operations Director, said. “We are doing that research on our own, that way we can have a better understanding so that we can continue, as I stated earlier, learning, growing, adapting, and improving. But today, I actually just don’t have a number.”

Gaspar confirmed to FOX59 Investigates the Bail Project does not read the probable cause affidavits connected to the clients they pay cash bail for. This sworn document details police allegations against a person.

“So, there are certain circumstances where we would want to know more information about the client, but usually we’ll get the indicators from looking at the MyCase, or if the family or friend members offer us information that is available,” Gaspar explained.

However, the probable cause affidavits are publicly available. Unless a judge seals it, they are accessible to everyone. In Marion County, where Gaspar lives and works, the probable cause affidavits can be searched on Odyssey, a statewide case management system, and either read online for free or printed out at the clerk’s office for a small fee.

“The process that we use is one that allows us to act very swiftly,” Gaspar said. “When you have individuals with each passing day that they’re in custody, they’re at risk of losing their job, they’re at risk of losing their housing, their children, everything that they have that they look forward to coming home to and that could actually provide some stability in order for them to be able to move forward is in jeopardy. So, for us to have to make that public request in order for us to have to wait for that, there’s more and more harm being inflicted upon an individual not to mention the harms and the trauma that comes along with just being incarcerated in general.”

However, a visit to the clerk’s office can produce the probable cause affidavit within minutes.

The Bail Project paid [Marcus Garvin](#)’s bail in January 2021 after he was accused of stabbing a random person at a gas station. Judge Shatrese Flowers lowered his bond in this case from \$30,000 surety to \$1,500 cash, which made Garvin eligible for the Bail Project’s help.

The probable cause details allegations against Garvin. The victim stated Garvin came to the bathroom door and knocked, and told him he had been in the bathroom too long. It says a short time later the victim, “stated Marcus Garvin began swinging at him, but did not realize he had a knife or that Marcus Garvin had stabbed him.”

We asked Gaspar why Garvin was a person the Bail Project would pay bail for.

“Once again, we didn’t actually have that affidavit available to us at the time that we were doing our work,” Gaspar said. “I can’t say that that wouldn’t have been impactful and that we wouldn’t have taken that into consideration and that it wouldn’t have changed the decision that we have made. But, not having that information, we moved forward with what we did have available. We did move forward knowing that we did have information available to us. We knew that we reached out to his contacts, we knew that we actually asked them what is actually going on, where do you believe that we actually have the opportunity to help? As tragic as that particular event was, it still is a very small percentage of the reflection of the work that we do. We’re talking about almost bailing out a thousand people. There’s an example of how within that broader span of work something tragic can happen. We can’t predict human behavior, we can’t predict when an individual is going to have a mental breakdown or if they’re going to not have the assistance that they need that is going to meet their exact needs that they have. We make our best assessments. We do our work and we do it consistently. This just happens to be an example of a tragic event.”

Another tragic event happened on October 1, when Nikki Sterling’s son, Dylan McGinnis, was shot and killed in Indianapolis. The man who is charged with his death was bailed out by both The Bail Project and a bail bonds agent; Travis Lang had four pending cases at the time of the murder.

“They’re not doing the research on the probable cause, so that tells me they’re not looking into other areas,” Sterling said outside of the Indiana House Chamber. She testified before lawmakers on Tuesday, January 25 in favor of regulations on charitable bail organizations.

“I was more dismayed to learn that the Bail Project operates without regulation meaning they can bail out whomever they want,” Sterling stated to the House, remembering the day she found out about the organization.

Sterling’s plea is the Bail Project takes into account the details of each case.

“They need to do more work on their end,” Sterling said.

The Bail Project points to its own data showing 95% of their clients made their court dates. However, FOX59 Investigates cannot confirm that information because the organization said, “The Bail Project abides by a strict Confidentiality Policy regarding information related to our prospective clients, current clients, and former clients. The list of the names of clients that The Bail Project provided bail for falls squarely under the penumbra of that Confidentiality Policy.”

IndyStar.

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Briggs: Bail bondsmen wilt under the Bail Project's spotlight

James Briggs

Indianapolis Star

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'They took a chance on me': The Bail Project helps low-level offenders who can't pay

Kathleen Merchant is getting her life together after The Bail Project bailed her out of jail. *Kelly Wilkinson, kelly.wilkinson@indystar.com*

As Indiana lawmakers drag the Bail Project out for a public flogging, bail bondsmen are cheering on the carnage while facing none of the same scrutiny.

The Republican-sponsored legislation working through the Indiana General Assembly to curtail the Bail Project's work is based on a simple premise: Financial assistance from a nonprofit to incarcerated poor people presents a unique and urgent threat to public safety.

The latest story in a Fox 59 series on the Bail Project added fuel to that fire Tuesday, sparking another round of scolding among charitable bail opponents. The Fox 59 story depicts the Bail Project as failing at due diligence when taking on clients and having no clue what happens once they are out on pretrial release.



April Angermeier, right, gets ready to take a photo of Kathleen Merchant, Thursday, Sept. 19, 2019. Angermeier is with The Bail Project. The national nonprofit pays the bail for low-level offenders who otherwise wouldn't be able to afford bail and would have to await trial in jail. Merchant was one of the people helped by The Bail Project. They paid her \$500 bail to get her released in June 2019. *Kelly Wilkinson/IndyStar*

Rick Snyder, the president of the Indianapolis police union, pounced on the story, questioning the Bail Project's data that show the vast majority of clients

appear in court as agreed. Both Fox 59 and Snyder contend that the Bail Project can't be trusted because it won't provide a full list of clients.

"Charitable Bail Org claims 95% Return to Court rating BUT Stats cannot be Confirmed due to Confidentiality Clause," Snyder wrote on Twitter.

I won't argue with the premise that we should be skeptical of numbers presented without context or means of verification. But testimony at the Statehouse has revealed that the Bail Project is the only organization in this line of work that is even *attempting* to account for the outcomes of clients.

The Bail Project is a nonprofit with a mission of making bail accessible to people whose finances would otherwise leave them stuck in jail while awaiting the resolution of their cases. As I've written before, the Bail Project has been the target of understandable criticism after it helped free at least three people who have been charged with violent crimes, including two accused of murder, while out on release in Indianapolis.

It's striking, though, that for-profit bail agents are freeing people on a much larger scale while offering almost no specific information about what's happening with their clients when they are out of jail. Bail bond agents are admitting as much even as they lobby for lawmakers to regulate and restrict the Bail Project's ability to function.

Michael Whitlock, a partner with the American Surety Company, testified against the Bail Project during a Jan. 25 House committee hearing. Whitlock played to concerns that the Bail Project can't keep track of its clients while offering no assurances about his own organization's record.

State Rep. Terri Austin, D-Anderson, asked Whitlock an important question: "Out of all the people you underwrite, how many of them are rearrested for a crime? Because that's the issue that we're wrestling with here today."

Considering all the rhetoric asserting that the Bail Project has blood on its hands, you'd expect bail bondsmen to have a good answer to that question.

Alas.

"I don't have that number," Whitlock said. "There's really, there's no easy way to track that number. Now, are people re-arrested while out on bail? Absolutely. Absolutely."

Stop and take in that answer.

The Bail Project since 2020 has helped release 941 clients, hundreds of whom would not have qualified for assistance under legislation that has passed in the House and is pending in the Senate. A key sales pitch for this legislation is that the Bail Project — and only the Bail Project — must be reined in to stop violent criminals from getting out on the street.

Yet, here we have an executive with an organization that is freeing far more people than the Bail Project and can't guarantee better results — and, in fact, is citing the size of his business as a deterrent to tracking what happens to people on pretrial release.

"At our maturity level, we write hundreds of thousands of bonds every year," Whitlock said. "It's very difficult to follow that information. But I will clearly admit that we're dealing with people that break the law. And they certainly have been known to break the law even while out on bail. And they will continue to do so."

If bail bond agents are admitting their clients break laws while out of jail — the precise problem that lawmakers say they want to solve with regard to the Bail

Project — then it seems pretty clear they're not working to achieve anything more than a moral victory here.

Austin asked a similar question of Jon Zarich, a lobbyist for the American Bail Coalition. He gave a similar answer.

“I don’t believe that data is being collected right now,” Zarich said.

As much as some lawmakers and the Indianapolis police union want to pretend that the Bail Project is hiding nail files in cakes to get people out of jail, there is no compelling reason to think that the nonprofit is acting with reckless disregard while bail bond agents are community pillars with hearts of gold.

On some level, I get the impulse behind this legislation. There have been real tragedies and the Bail Project’s name is on them. There are family members who want answers and accountability. It’s reasonable to ask how the Bail Project intends to be more selective in the future, particularly as an organization that has received public money.

But the spotlight on the Bail Project has shown the nonprofit is at least performing an audit of its work in contrast to bail bond agents that can’t bother to come up with any numbers of their own.

We live in a country that balances the risks of bail with the societal benefits of maintaining family and career connections for people who have not been convicted of crimes. The Bail Project has an important role to play in that part of our criminal justice system.

The Indiana General Assembly is going to do what it wants to do. So far, though, the bail bondsmen are making a pretty good case in favor of the Bail Project.

Contact IndyStar metro columnist James Briggs at 317-444-6307. Follow him on Twitter: [@JamesEBriggs](#).

Desert Sun.

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CRIME & COURTS

California moves to revoke licenses of two bail agents tied to Palm Springs man's killing

Christopher Damien

Palm Springs Desert Sun

Published 7:00 a.m. PT Feb. 13, 2022



A screenshot from video footage shows bounty hunter Fabian Herrera walking up to the front door of David Spann's Palm Springs condo just after 2 a.m. on April 23, 2021. The video is part of the criminal investigation into what would ultimately become a fatal shooting of Spann. *Riverside County Superior Court*

The California Department of Insurance is seeking to revoke the licenses of two bail agents who hired the bounty hunter who shot a Palm Springs man dead in his home last year.

The department has made a preliminary decision to strip the licenses of Melissa Lippert, of Justice Bail Bonds in Temecula, and another bail agent she works with, Jose Navarro. Their licenses, however, will remain active until a hearing in June.

The department's investigation report said the two failed to provide David Spann and his family with the help they promised to when the 33-year-old Palm Springs man signed a bail agreement with them. The bail agents didn't drug test Spann as he lapsed into substance abuse, and wrongly sent a bounty hunter with a felony record to rearrest him after cutting contact with his family, the Department of Insurance said in a report.

The department is justifying the revocations on alleged incompetence, untrustworthiness and failures of duty, including the fact that the two hired a bounty hunter with a felony record. Under California law, convicted felons must obtain a bail agent license from the department before attempting arrests.

The bounty hunter, Fabian Hector Herrera, did not have a bail agent license when he fatally shot Spann during the botched arrest attempt. He has since been charged with Spann's murder.



Fabian Herrera's preliminary hearing on Aug. 23 in the death of David Spann

A preliminary hearing began Aug. 23 for Fabian Herrera, a felon working as a bounty hunter who is accused of murder in the death of David Spann.

Lippert's attorney, Warren Ellis, said she would be fighting the allegations at a hearing in June: "The allegations made by the Department of Insurance are not based in fact."

Navarro did not return The Desert Sun's request for comment for this story.

Spann's family has been demanding that state officials investigate the events leading up to the fatal shooting for almost a year. While they said they were pleased with the action, they argued that much more needs to be done to regulate bail agents and bounty hunters.

Among the changes they are demanding are requiring that bounty hunters be licensed and requiring a judge to issue a warrant before a bounty hunter or bail agent attempts an arrest.

Their demands echo years of pleas from bail workers and legislators alike to increase oversight and transparency of the industry. They were, in fact, among 12 recommendations made in 2018 by then-state Insurance Commissioner Dave Jones to address the problems plaguing commercial bail in California.

Neither change was ever made. Had they been, says Bill Spann, his brother might still be alive.

"Laws and ordinances can be passed, changed, increased, decreased and adjusted," Spann said. "But because nobody did anything about this, I'm never getting my brother back."



William Spann shows a photo of his son, David Spann, while standing in his condo just a couple hundred feet away from where David was murdered in Palm Springs, Calif., Friday, Feb. 11, 2022. David Spann was fatally shot in his condo April 23, 2021 by Fabian Hector Herrera, a bounty hunter hired by area bail agents Spann was in contract with. Spann's family continues to demand justice, including major reforms of the bail industry. *Andy Abeyta/The Desert Sun*

The death of David Spann

Fabian Hector Herrera, the bounty hunter who forced entry to David Spann's apartment with a sledgehammer, is facing charges of murder, perjury, possessing a firearm, body armor and ammunition as a felon. Herrera has twice been convicted of assault with a deadly weapon. His mother, who accompanied him, is also facing charges, including murder.

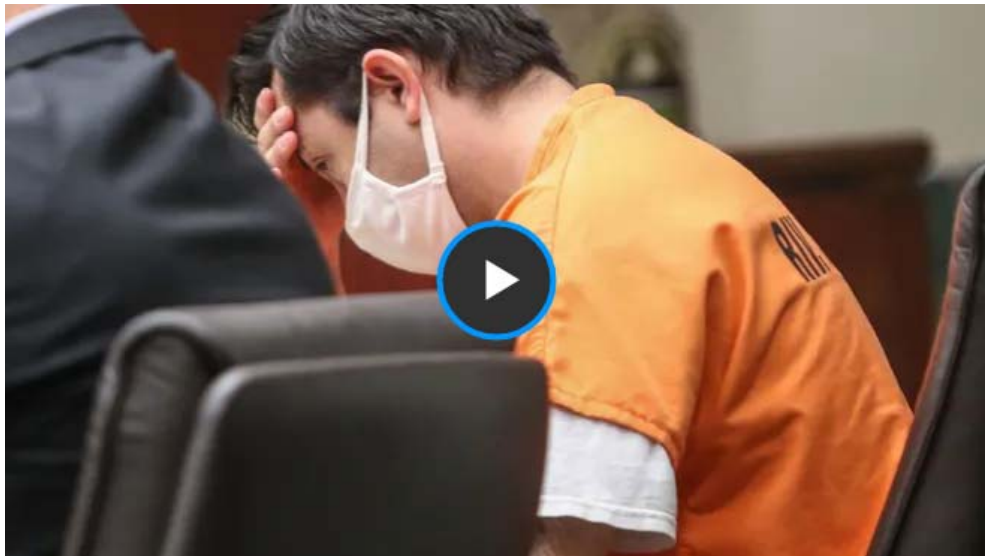


Lisa Vargas has been charged with murder in the fatal shooting of David Spann on April 23, 2021. *Courtesy Of The Riverside County Sheriff's Department*

At the time Herrera and his mother entered Spann's home, no court was demanding that Spann be returned to jail. Spann was on bail facing misdemeanor charges of violating a restraining order and had no active warrants. But Lippert's bail agency said Spann had deactivated a tracking device he was required to wear under his contract with her company.

Herrera fatally shot Spann in front of two Palm Springs police officers who had been dispatched to the scene as the chaotic confrontation was unfolding.

Navarro, the bail agent who dispatched Herrera, testified at Herrera's preliminary hearing that he did not know Herrera had been convicted of violent felonies in Los Angeles and Riverside counties. Navarro himself has a felony criminal record but was granted a bail agent license by the Department of Insurance in 2013.



Palm Springs bounty hunter case: Security camera footage captures 2 defendants' actions

On April 23, 2021, Fabian Hector Herrera is captured attempting to kick in the door of David Spann, soon before Herrera broke into Spann's Palm Springs condo and fatally shot him. *Christopher Damien, Palm Springs Desert Sun*

People without felony criminal records who want to work as bounty hunters in California are not required to obtain a license, although they are supposed to take classes on arrest and bail work.

Herrera took the classes, but as a felon, he could not legally arrest another person unless he had acquired a bail agent license from the state, and could not legally be armed. Nevertheless, Navarro said he had hired Herrera for bail arrests several times before he received the order to arrest Spann.

Navarro specializes in recruiting bounty hunters for other agents who need them, according to his testimony in Herrera's case, and has done this work for Lippert for years. He said he received the order from Lippert ordering Spann's arrest, forwarded it to Herrera by text and assumed the job would go as planned.

Hours later, Herrera called Navarro and told him in a shaking voice, through tears, that he had killed Spann and that police were questioning him, Navarro testified.



Fabian Herrera appears in court during a preliminary homicide hearing for the shooting death of David Spann at the Larson Justice Center in Indio, August 23, 2021. *Jay Calderon/The Desert Sun*

'...Make him my project...'

The Desert Sun reviewed 200 enforcement actions initiated by the department over the last decade. Only one other investigation over that time period focused on a licensed bail agent hiring a convicted felon as a bounty hunter. Bail agent Jane Un argued that she was deceived by the man; she was ordered to pay a \$2,500 fine.

But the case against Lippert and Navarro includes several more alleged offenses.

In the last decade, the department has never attempted to revoke the license of any bail agent on the basis of not keeping promises made as part of a client's bail agreement.

One of the department's attorneys, Brian FitzGerald, wrote the report outlining the case against the two agents. The department opened its investigation after it received a request to do so last May from David Spann's father, William Spann.

Soon after David Spann was arrested on April 1, 2021 — for allegedly violating a restraining order, a misdemeanor — he contacted Lippert to arrange his own bail, the department found.

When his relatives tried to intervene, Lippert told them that it was too late to stop the process. Instead, investigators found, she discussed with the family their concerns and agreed to several conditions to proceed with posting Spann's bond.

The Department of Insurance declined to provide further information about the family's intervention in the bail process and the legality of Lippert's claims.

Lippert exchanged text messages and other communications with William Spann and Bill Spann, saying she was going to help David Spann.

The investigation report mentions these exchanges and how they established for William Spann that his son would "submit to random drug screenings and mental health treatment, to be enforced by Lippert"; however, it says, these "conditions were never enforced and while his son's mental illness worsened, the bond was revoked."

Lippert said she would have Spann's residence searched for drugs. But in the three weeks he was out on bond, this was only partially done once, the Department of Insurance investigators found.

Lippert also said she would have Spann drug tested. Investigators found that Lippert had hired a man, Jeff Guiso, to do this but it was never completed.

Spann told Guiso that he had used drugs recently and Lippert didn't do anything about it, the Department of Insurance report said.

These failed efforts are in stark contrast, investigators said, to Lippert's text to the family around the time Spann's bond was posted saying that "I am going to make him my project to get him clean and back on the right track."

"But Lippert failed to make any effort or take any action to indicate that this assumption of duty of care was sincere," the report states. Instead, she held the bond as Spann "gradually spun out of control and exhibited many symptoms which ought to have alerted Lippert that [Spann's] family had truly valid concerns."

When Lippert revoked Spann's bond, she didn't tell the family, didn't arrange for any addiction treatment and didn't take any personal responsibility, the Department of Insurance investigators said.

"Rather than follow through with her stated intentions, Lippert simply contracted out [Spann's] apprehension to another bail agent, Navarro, who then subcontracted the task to Herrera, a convicted felon illegally acting as a [bounty hunter]," FitzGerald wrote. Neither, he added, made "any inquiry to ascertain the training and background of Herrera until after [Spann] was killed."

Ellis, Lippert's attorney, claims his client didn't break any rules and is confident she'll succeed in retaining her license.

"Ms. Lippert has always conducted all of her business activities as a licensed bail agent and business owner with the utmost integrity and in absolute accordance with the law," Ellis said. "Ms. Lippert did not violate any provisions of the Insurance Code, nor did she violate a single obligation or duty of bail. We will vigorously defend Ms. Lippert in all proceedings related to her licensing and expect her to be fully exonerated at the conclusion of this matter."

William Spann said the Department of Insurance and state lawmakers must make regulatory changes to ensure something like this never happens again.

He maintains that "the department is complicit" in his son's death: "Why didn't they make this an industry where you had to be licensed and have a background check to be a bounty hunter?"



Police body camera footage capturing the lethal confrontation between David Spann of Palm Springs and two bounty hunters in April was released Wednesday, Sept. 22, 2021, shedding public light on the fatal shooting that has resulted in two murder charges. *The Desert Sun Screenshot From Police Cam Footage*

'We face challenges with bounty hunters because we don't know how many there are'

The Department of Insurance has been struggling to keep those with felony convictions from working as bounty hunters for most of the last two decades.

Before 1999, anyone who was 18 years old could be a bounty hunter with no training. But that year, a law known as AB 243 included a requirement that prospective bounty hunters take a class for licensed security guards, through the California Department of Consumer Affairs' Bureau of Security and Investigative Services.

The bill stated that a background check and fingerprint were required for admission to the class, which would make state authorities aware if a convicted felon was attempting to become a bounty hunter. But the law expired in 2010, leaving the state legislature to decide which, if any, of its requirements should be implemented in a new law.

The Bail Fugitive Recovery Act replaced it in 2012. It established the current law that a bounty hunter with a felony record needed to have a bail agent license in order to arrest people. The security guard course and its background check, however, was dropped and a full licensing requirement was not included in the 2012 law.

Chuck Jordan, president of the National Association of Fugitive Recovery Agents, a trade group that represents bounty hunters, said the state legislature could have required bounty hunters to be licensed in 2012 and is now dealing with the consequences of failing to.

"Right there, they missed an opportunity," Jordan said. "They had a shot to require licenses and they didn't."

The Department of Insurance licenses bail agents because the bonds they offer are financial products that require insurance policies to back them. But the department claims it has no authority over bounty hunters, because bounty hunters are not required to have a license in California and they do not conduct financial transactions like bail agents do.

During a 2017 public hearing, the department's division chief for investigations, Kim Johnson-Woods, acknowledged that bounty hunters perform arrests in the shadows of an industry her department is responsible for regulating.

"As regulators, we face challenges with bounty hunters because we don't know how many there are and we don't license them," Johnson-Woods said. "They

are a function of the bail process in that they apprehend fugitives in surrenders, but they remain unregulated."

The report prepared by Jones in 2018 said that an unknown number of bounty hunters arrest about 37,000 people a year. That data was from 2013 and was the most recent available to the public.

Jones would later write in the report that the department is "tasked with investigating bail fugitive complaints despite the fact that bounty hunters are not licensed and do not pay any fees" to the Department of Insurance, also known as CDI.

"Bounty hunters who are not already licensed bail agents in California should be required to obtain a license from CDI, which would include the passage of a California licensing examination and passage of a fingerprint-based background check done by both the California Department of Justice and the Federal Bureau of Investigation," he urged.

That background check would reveal whether an applicant had a felony conviction.

When the report was published, Jones was already campaigning to unseat Xavier Becerra in an ultimately unsuccessful bid for attorney general. Ricardo Lara was elected as the next commissioner for the department and took office in 2019.

Do other states require bounty hunters to be licensed?

Currently, 21 states require bounty hunters to be licensed. Even some industry leaders say it's a change California needs to make to improve safety.

Jordan said his organization has long been in support of "a clear-cut licensing process" in California.

"You submit your education, you get a background check. You've got to renew. There's accountability," Jordan said. "A license needs to be able to be revoked. And also if you violate the requirement, there has to be some sort of criminal liability. If it's only a \$500 fine, then that might be easier to pay than going through the rigmarole of getting certified."

Jeff Clayton, the executive director of the American Bail Coalition — a trade association of insurance companies that underwrite bail bonds — and a lobbyist for the bail industry in Sacramento, also endorses the idea of licenses for bounty hunters.

"We agree that recovery agents should have licenses," Clayton said. "We need to professionalize that important aspect of the work."

Jones had called for another change in bail law that would require a warrant be issued by a judge before an arrest. Without that requirement, as is the case currently, bail agencies can order the arrest of a person based on questionable cause and with no oversight.

"The warrant obtained with prior judicial approval is consistent with existing law and other states, and would prevent unlawful entry into third party homes and/or businesses by bail agents and their contracted bounty hunters," Jones wrote. "It would prevent jail overcrowding, unnecessary confrontation with third parties and clarity to law enforcement and first responders."

Several of Jones' points apply to Spann's case. Spann had not missed a court date and there was no active warrant for his arrest. It was illegal for Herrera and Vargas to force entry into Spann's home. When they took a sledgehammer to his door, they were breaking and entering, prosecutors claim, and attempting to kidnap Spann. When Herrera shot Spann, prosecutors say, he was already in the process of committing a felony.

The pain and anger Bill Spann said he struggles with because of the loss of his brother only increased when he was made aware of Jones' 2018 report and recommendations.

"They could have done something about this years ago, and they didn't," Bill Spann said.

Little traction in the Legislature

Deputy Insurance Commissioner Michael Soller said that Jones' 2018 report is one of several efforts the department has made in recent years to reform the bail industry. Soller, however, said several bills sponsored by the department were not passed by the state Legislature.

In his time as commissioner, Jones sponsored three bills in the Legislature that would have addressed some of the recommendations he would later put in his report.

Two of the bills, AB 2449 and AB 1406, would have established the Bail Investigation and Prosecution Fund from fees assessed on every bail bond. The fund would have been used to pay for more investigative services and enforcement of bail laws. Some of the money would have also been distributed to district attorneys and city lawyers to support prosecuting illegal bail practices. Both bills died in the 2015-16 legislative session.

A third bill Jones sponsored, AB 1334, would have allowed the department to inspect or audit the records of a person or company working in the bail industry. The bill stalled in the Committee on Insurance in 2017.

After these three bills failed, Soller said, lawmakers changed focus.

"Instead, the Legislature moved to end cash bail in 2018, putting Proposition 25 on the ballot which would have addressed most of these issues," Soller said.

But the proposition didn't pass either, with 56% of voters opposing it in 2020. By that time, Ricardo Lara had been voted in as insurance commissioner.



California Insurance Commissioner Ricardo Lara. *ANTHONY PLASCENCIA/THE STAR*

Lara sponsored two bills related to bail since he has taken office, Soller noted. AB 1347 passed and has become law, making it illegal for bail agents to charge bond renewal fees. The second bill he sponsored, SB 262, was put on hold last year and is still being considered. If it passes, it would establish several reforms to the economics of bail, including a statewide schedule making uniform the currently wide-ranging costs of bail for the same charges in different counties.

None of these efforts, however, address the two most salient of the Jones recommendations that intersect with Spann's death: bounty hunter licensing and arrest warrants for bail arrests.

Jordan said that any changes short of getting rid of bail have largely fallen flat: "They have been looking to eliminate the commercial bail industry altogether, but obviously voters didn't want that. So here we are."

Meanwhile, Spann's survivors are left to grapple with his absence in light of the report, the failed legislation, the license investigation that is still unfolding and their myriad questions about how this could have been prevented.

"All we can do now is expose what happened, and make sure it doesn't happen again," Bill Spann said. "That's the main thing, to make sure it doesn't happen again."

Christopher Damien covers public safety and the criminal justice system. He can be reached at christopher.damien@desertsun.com or follow him at [@chris_a_damien](https://twitter.com/chris_a_damien).

Desert Sun.

PART OF THE USA TODAY NETWORK

Bill would require bounty hunters to be licensed in California

Christopher Damien

Palm Springs Desert Sun

February 19, 2022



Fabian Herrera appears in court during a preliminary homicide hearing for the shooting death of David Spann at the Larson Justice Center in Indio, August 23, 2021. Jay Calderon/The Desert Sun

About a year after a Palm Springs man was fatally shot by a bounty hunter with a felony record, a California lawmaker has introduced a bill that would make extensive changes to the bail industry, including requiring new state licenses.

The bill, proposed on Feb. 14 by Assemblymember Reggie Jones-Sawyer, D-South Los Angeles, is sponsored by California's Insurance Commissioner Ricardo Lara, the Department of Insurance oversees the bail industry.

Bounty hunters, who are contracted by bail agents to arrest bail fugitives, currently do not need a license to do that work. They are required to take two courses and can't make arrests with a felony conviction unless they become licensed bail agents.

And because the Department of Insurance does not license bounty hunters, it doesn't have data on how many are working in the state and can't know for sure if they're doing the work lawfully, according to a 2018 report from the former Insurance Commissioner Dave Jones.

Jones recommended in 2018 that bounty hunters should be licensed and subject to a background check before being permitted to make arrests. Those recommendations were not acted on until now.

'I want to see the bail industry in this state reformed'

The renewed call for bail industry reform comes as a murder trial unfolds in Riverside County Superior Court.

David Spann, 33, was fatally shot by a bounty hunter who had broken into his Palm Springs home in the middle of the night to arrest him at the request of two bail agents.

Spann had been released on bond a couple of weeks earlier for an alleged violation of a restraining order. Justice Bail Bonds of Temecula ordered Spann's arrest after a tracking device he was supposed to wear apparently had been deactivated.

Fabian Hector Herrera and Lisa Vargas, his mother, broke into Spann's home and called the police to ask for assistance when Spann did not immediately surrender. Herrera fatally shot Spann in the presence of two police officers, and he and Vargas have since been charged with murder.

Herrera had been twice convicted of felonies and was not legally allowed to possess a firearm or work as a bounty hunter. His convictions required him to obtain a bail agent license before attempting to make arrests.

The California Department of Insurance has moved to revoke the licenses of the two bail agents who hired Herrera for the job, Melissa Lippert and Jose Navarro. Their licenses are active, but a hearing on the matter is scheduled for June.

Spann's relatives have sued the City of Palm Springs, its police department, Lippert, Navarro and several other bail agents and the insurance companies who back them for wrongful death.

William Spann, David Spann's father, told The Desert Sun that in light of his son's death, bounty hunters should be licensed and the bail industry reformed.

"I want to see the bail industry in this state reformed so that what happened to my son does not happen to another innocent victim," William Spann said.

Bill Spann, David's brother, supports the licensing of bounty hunters, but said that no change in law will bring his brother back.

"All we can do now is expose what happened, and make sure it doesn't happen again," Bill Spann said.

About AB2043

The bill as proposed would make significant changes to the Bail Fugitive Recovery Act, a law passed in 2012 that established the current requirements for bounty hunting work. The act stopped short of requiring a license for bounty hunters and did away with a preceding requirement for bounty hunters to take a security guard course that included a background check.

While the Bail Fugitive Recovery Act requires bounty hunters to get bail agent licenses if they have felony records, there is little evidence the requirement is being enforced. The Desert Sun found only one case over the past

decade in which a bail agent was disciplined by the department for hiring a felon as a bounty hunter.

AB 2043 makes explicit that a bounty hunter, referred to in the law as bail fugitive recovery person, would have to be licensed as such, or hold a bail agent license, in order to do the work. It also would permit bounty hunters to negotiate bail on behalf of an insurer, which currently only a bail agent can do.

That addition would require each bounty hunter to be appointed by an insurance company, and have that appointment on file with the Department of Insurance. This could lead to reliable information on how many bounty hunters are working in the state, and if they have been charged or convicted of crimes, which bail agents are required to inform the department about.

Bounty hunters would have to take one 20-hour course on bail and one 40-hour course on arrest practices.

The bill would increase the cost of a bail agent license from \$283 to \$311, the same cost of a potential bounty hunter license. Bounty hunter's names and licensing information would be published on the department's website.

Proposed changes to the bail industry have been fiercely debated in the state legislature and in the public in recent years. Former Gov. Jerry Brown signed a law that would have virtually eliminated the commercial bail industry in 2018. However, the change was challenged and put before voters in 2020. Proposition 25 failed after being supported by only about 44% of voters.

Jones-Weber and Lara aren't the only supporters of requiring bounty hunter licensing.

Chuck Jordan, president of the National Association of Fugitive Recovery Agents, said his organization has long been in favor of a licensing requirement.

Jeff Clayton, the executive director of the American Bail Coalition, previously told The Desert Sun that a bounty hunter license would help professionalize the industry.

The details of the bill are expected to be debated in the legislature beginning in March.

Christopher Damien covers public safety and the criminal justice system. He can be reached at christopher.damien@desertsun.com or follow him at [@chris_a_damien](https://twitter.com/chris_a_damien).



INDIANAPOLIS NEWS AND HEADLINES > [POLITICS](#)

New rules for The Bail Project: Fair regulation or an attack on the poor?

'These folks need to be regulated just like anybody else'



Photo by: WRTV Photo/Bob Blake

By: [Vic Ryckaert](#)

Posted at 3:44 PM, Mar 02, 2022 and last updated 4:09 PM, Mar 02, 2022

INDIANAPOLIS — After a night out celebrating a friend's birthday, Michael Kasnick took an Uber to a buddy's house to sleep it off.

Dawn was just breaking when Kasnick entered the duplex unit through an unlocked door and promptly passed out. One big problem: It was the wrong house.

The residents woke to find a sleeping stranger on their couch. They called the cops.



Vic Ryckaert/WRTV

Michael Kasnick

Kasnick was arrested and charged with residential entry in October 2019. The crime is a felony. Kasnick was facing a possible sentence of up to 2-1/2 years in prison.

He spent a few weeks in jail, unable to scrounge up money for bail. At the time, his dad was battling cancer and he was in college and working construction jobs.

“Bail was set at \$1,000. I didn’t have this kind of money,” said Kasnick, 26. “I don’t know how long I would have sat in there without their help.”

The help came from The Bail Project, a non-profit that pays bail for those who can’t afford to pay.

Kasnick went to his court hearings, accepted a diversion agreement and his case was dismissed in May 2021. He credits The Bail Project for allowing him to stay in school and keep his job.

The Bail Project under fire

But the group has faced a barrage of criticism in recent months after three people it helped get out of jail were later accused of committing violent crimes. Two of the [defendants](#) were accused [of murder](#); a third has been [accused of stabbing two police officers](#).

Indiana lawmakers have cited headlines in these cases to [justify changes that will set new limits on The Bail Project](#) and similar groups.

David Gaspar, The Bail Project’s national director, said the proposed changes are unfair.

“Every citizen facing an allegation is presumed innocent until proven otherwise,” Gaspar said. “The problem nowadays is cash bail. Cash bail is the practice of asking someone to come up with a sum of money in advance, prior to them actually having their day in court in order to secure their freedom.”



Vic Ryckaert/WRTV

David Gaspar, The Bail Project's national director.

This, Gaspar told WRTV, creates one system of justice for folks with money and another much harsher system for the poor.

“What the Bail Project is seeking to do is level that playing field,” Gaspar said. “We’re restoring that fundamental right; that constitutional guarantee to everyone... which is the presumption of innocence.”

The Bail Project says it has paid the bail for 980 people since 2018 when it first launched in Marion County. Most of them are people a lot like Kasnick.

According to The Bail Project's 2021 report to the Marion County courts, about 6-in-10 of their clients need a ride to their hearings; about 71% have children or are pregnant; about 51% are unemployed.

The Bail Project reminds its clients of their court dates and helps find them transportation. It refers people to social service agencies for further

help with mental health services, addiction counseling, housing, job placement and other issues.

Limiting charitable bail groups

But it's those headline-grabbing stories of violence and tragedy that prompted two lawmakers to author bills that regulate The Bail Project and similar nonprofits.



Vic Ryckaert/WRTV

Sen. Aaron Freeman

"So these folks need to be regulated just like anybody else," Sen. Aaron Freeman, R-Indianapolis, said. "In my opinion, a bond agency has capital on the hook. They post a bond and they have to go get the person if that person absconds, or doesn't show up for their court appearance. They've got a financial interest to make sure that the judge in this case gets that defendant back in front of them."

Freeman's bill has been folded into a similar measure in the House authored by Rep. Peggy Mayfield, R-Martinsville. Differing versions of Mayfield's bill won approval in the House and Senate.

The bill will go to a conference committee to work out differences, Mayfield told WRTV. The date for that committee has not yet been set.



Vic Ryckaert/WRTV

Rep. Peggy Mayfield

Mayfield said her bill actually brings fairness to the bail system.

"We wanted them to follow the same rules as anybody else posting bail," Mayfield said. "It's a highly regulated industry and we just thought it fair that they'd be regulated in the same way."

'Two-tiered' justice

Rep. Greg Porter, D-Indianapolis, strongly opposes the changes. He said the bill further penalizes the poor by valuing zip codes and bank rolls over justice.

"It is a two-tiered system, the haves and the have-nots," Porter said. "They (poor people) don't have a get-out-of-jail card... I equate this to Monopoly, the board game. You get out of jail because you live on Broadway. You don't get out of jail because you live on Indiana Avenue."



Vic Ryckaert/WRTV
Rep. Greg Porter

But as a member of a minority party in a state where Republicans hold a super-majority, there's little Porter and other Democrats can do to stop the measure from passing.

The changes are not final and could be overhauled in the conference committee, Mayfield said. As the proposal stands, charitable bail organizations will have to register with state insurance regulators; can only assist people charged with misdemeanors or non-violent crimes; and can pay bails that are no higher than \$2,000.

Private companies

Devin Moore, president of Moore Surety Bonds Agency in Indianapolis, told an Indiana Senate committee on Jan. 11 that his bail agents keep in touch with the families of people they bail out and watch for signs that an individual might be planning to commit another crime or violent act.

"We make sure that these individuals come back to court and we also make sure that if they are allowed out on bonds, that they are following the rules and regulations of our state," Moore told the committee.

Private firms keep no statistics on how many of their clients commit crimes while they are out of jail, a lobbyist for the American Bail Coalition told an Indiana House committee on Jan. 25.

The Bail Project gathers statistics and keeps tabs on its clients, Gaspar said. He notes the proposed new rules do not set any limits on the private bail bond firms.

What the changes do, Gaspar said, is “criminalize poverty.”

“It keeps people who have no means in custody for longer periods of time. And for those individuals, that is beyond harmful,” Gaspar said. “You already have somebody who's living paycheck to paycheck. You already have somebody who's just struggling to pay the rent; that's struggling to put food on the table. And now you're incarcerating them, putting them even further behind, putting them deeper in a hole.”

Contact WRTV reporter Vic Ryckaert at victor.ryckaert@wrtv.com or on Twitter: @vicryc.

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NEWS

FOX59 examines differences between surety and cash bonds

by: Courtney Crown

Posted: Mar 9, 2022 / 10:28 PM EST

Updated: Mar 9, 2022 / 10:28 PM EST

INDIANAPOLIS, Ind. — FOX59 continues investigating who is paying bail in Marion County. As we've told you, the Bail Project admits it does not read all the publicly available details about a crime before release, nor does it keep track of those arrested on new charges.

Bail bond agents don't either, but that's where most similarities end between these two bail entities. The main differences come down to contracts with defendants' loved ones, the ability to make arrests of those defendants who abscond and bail agencies are not funded by taxpayers.

"I think the real benefit of bail agents is that when we have third-party involvement," Jeff Clayton, American Bail Coalition Executive Director, said of people signing a contract to bail a person out of jail. "That's the best information we can get."

[The Bail Project](#) says its team also speaks with friends, family and other third party contacts, but those people are not signing a contract to help with the bond.

Surety bonds require a non-refundable fee, usually 10%, to a bail bonds agent to get released. It is the judge who sets the bond.

"What ends up happening is then a bail bonds agent will then evaluate the case," Clayton said. "What are the charges, what is the prior criminal history of the defendant, do I know the defendant? Really the real question is, who is the third party that is involved because usually, it's not the defendant posting their own bail."

Licensed bail agents enter into a contract with people vouching for the defendant. Agent Brent Smith said he often requires a commitment with multiple people including a family member.

"Once the Indemnitor meets me, we will have them fill out an application," Smith said. "The Indemnitor is the person who is going to sign on the bond, who is going to financially be responsible and to make sure that this defendant, he or she, shows up for court."

Bail agents say there are reasons why the person signing the contract is inclined to tell the truth.

“They’re under contract one not to misrepresent to us,” Clayton said. “If they lie to us, we can sue them. If they misrepresent what their financial situation is or characteristics of the defendant and we make a mistake, they’re liable and the courts can hold them liable. It’s a three-party contract: us, the third party and the court.”

Indiana’s bail agents must hold a license with the Department of Insurance. The IDOI is responsible for regulating bail agents and insurance companies issuing bail bonds.

This license allows agents to track people who don’t show up for court across the country.

“With bail, I want to make this very, very clear to the citizens of Indianapolis, it does not cost the taxpayer anything when a bail enforcement agent has to go pick up the defendant that failed to appear in court,” Smith said.

At the time of our interview, one of Smith’s employees was in Texas working to track down two people who fled the state. It’s the responsibility to apprehend that bail agents say sets them apart from other bail organizations.

“We post a financial guarantee saying if this guy does not show up, we either arrest them and bring them back or we have to pay,” Clayton explained. “So, it’s almost like a mortgage type of a document where we sign a contract with the court that lays out what we’re supposed to do.”

As we’ve reported, three people who the Bail Project paid to release from jail are now accused of heinous crimes, including murder and stabbing police officers. At the time, the Bail Project said it did not have data on how many of its clients re-offended while on release.

The American Bail Coalition said bail bond agencies do not track that information either.

“I don’t know what the true number is in Indiana, but if I had to take a guess, I would guess it’s lower than 20%,” Clayton said. “But, I don’t have any way to sort of back that up.”

Clayton cited a few reasons why bail agents would refuse to pay a bond, including serial offenders.

“They’re either going to violate their bond, they’re going to fail to appear, or we think they’re going to commit a heinous crime,” Clayton said. “A lot of times these happen in domestic cases where we just know it’s just not been defused. Mistakes are made and you can probably Google a bunch of mistakes that were made.”

The Bail Project is expected to [provide the Marion Superior Court](#) with information judges requested including how many of their clients picked up new cases while on released and how many referrals the organization made to wraparound services. Once judges receive the information, a meeting will be set.

Then, the court says it will decide whether to support The Bail Project moving forward.



[KTRH Local Houston and Texas News](#)

Proposal Forcing Harris County Bondsmen to Accept 10 Percent Fails

By **Nik Rajkovic** Mar 9, 2022

Harris County Democrats fail to convince the Bail Bond Board to force bondsmen into accepting at least 10-percent.

Attorney Ken W. Good called it election year politics and illegal on its face.

"You're acting as the Texas Legislature. If you want to set what we should charge, that should be done, if it can, at the Texas Legislature not here."

Needing five votes to pass, the board voted 4-4 with two abstaining and one absent.

Bondsman Shuan Burns argued against it, saying it would not accomplish what supporters believe it will.

"We are no longer able to negotiate with the poor, we can only bond out those with money," he said.

"Second of all I just want to say I have yet to hear how this rule is going to make us any safer."

Bondsmen argue the rise in crime and murders is due to an increase in personal recognizance bonds, which allow defendants to walk free until their trial.

Wednesday, March 9, 2022

Lawmakers adopt new rules for The Bail Project: Bill goes to the governor's desk



Photo by: WRTV Photo/Bob Blake

By: Vic Ryckaert

INDIANAPOLIS — Indiana lawmakers on Tuesday approved a bill that [sets new limits on The Bail Project](#) and other charities that pay bail for poor people who face criminal charges.

The Bail Project bill was among the last pieces of legislation to win approval before the 2022 Legislative Session ended late Tuesday.

Among the changes under the bill, charitable bail organizations will have to register with the Indiana Department of Insurance and can only assist people charged with misdemeanors and non-violent felonies as long as the accused has never been previously convicted of a violent felony.

"I'm pleased," Sen Aaron Freeman, R-Indianapolis, said. "I mean, with any piece of legislation, you don't get everything you want when you're one of the 150 people. ... It came down to the end because there were a lot of negotiations going on."



Vic Ryckaert/WRTV Sen. Aaron Freeman

Freeman authored the Senate's version of the bill, which was folded into House Bill 1300. The measure drew intense debate in a conference committee, even after Republicans used legislative maneuvers to kick Democrats out of the negotiations on Monday. The conference

committee issued 14 versions of the bill before it finally settled on the language that won approval with a 35-15 vote in the Senate and 68-27 in the House.

Freeman stressed that the bill will ban public money from going to The Bail Project and similar groups. The Bail Project received [\\$150,000 from Indianapolis taxpayers through grants aimed at fighting crime](#).

"I mean, that's just that's egregious to me," Freeman said. "I'm grateful that we were going to put an end to that."

Rep Gregory W. Porter, D-Indianapolis, said the Republicans who control the process pushed the bill through even though it wasn't ready.



Vic Ryckaert/WRTV
Rep. Greg Porter

"I think House Bill 1300 still has a long way to go," Porter said. "I think it was a piece of proposed legislation that could have just waited another year."

Porter strongly opposed the proposed changes, arguing that the new rules mean poor people will needlessly spend time in jail. He hopes that lawmakers will make further changes to the law during the next legislative session.

The Bail Project faced heavy criticism in recent months after three people it helped get out of jail were later accused of committing violent crimes.

Nikki Sterling's son [Dylan McGinnis](#) was shot to death on the east side of Indianapolis last year. The man accused of killing McGinnis was free thanks in part to money from The Bail Project.

"I'm really pleased to hear it was passed and that the leaders took the opportunity to listen to my voice as well as other the voices of other mothers of Indiana," Sterling told WRTV Wednesday.

Sterling spoke at the Statehouse in support of the new rules. Lawmakers cited Sterling's son's death and the other highly publicized cases when they called for the new rules on charitable bail organizations.

"My main purpose was to prevent other families from falling victim as well," Sterling said. "I believe that taking this direction and passing this bill will will do so in Dylan's honor. He always loved helping people. I feel like this is going to save many lives down the road."



Provided by Nikki Sterling
Dylan McGinnis

Sterling and other supporters of the bill say they want non-profit groups like The Bail Project to be regulated the same way the state regulates private bond companies.

Opponents say the new rules in the bill will make it more difficult to be poor in Indiana.

"Let's be honest about what happened here: a group of lawmakers exploited the public's legitimate concerns about public safety to target a charity and protect the interests of the bail bond industry," The Bail Project's National Director of Operations David Gaspar said in a statement emailed to WRTV.

"The end result will be more poor people sitting in jail at taxpayer expense without having been convicted of anything and not getting the services they need."

The Bail Project has bailed out almost 1,000 people since it began operating in Indianapolis in 2018. The non-profit says it "combats mass incarceration by disrupting the money bail system — one person at a time."

The Bail Project says 95% of the people it bails out make all their court dates. According to The Bail Project, about 6-in-10 of their clients need a ride to their hearings; about 71% have children or are pregnant; about 51% are unemployed.

The Bail Project said it helps reducing missed court dates by reminding clients of hearings and getting them transportation if they need it. It also refers people to social service agencies for further help with mental health services, addiction counseling, housing, job placement and other issues.

"This legislation neither solves any meaningful problems nor does it make Indianapolis any safer," said Gaspar, who lives in Indianapolis. "It

is hypocritical, ineffective, doesn't embrace real bail reform, but represents only surface-level politics and personal political ambition."



Vic Ryckaert/WRTV

David Gaspar, The Bail Project's national director.

Friday, March 18, 2022

Mother of murdered son applauds passage of bail regulation bill

POSTED BY: THE REPORTER

Indiana native Nikki Sterling has tirelessly campaigned for changes to be made in Indiana laws to regulate charitable bail funds ever since the murder of her son, Dylan McGinnis, this past October by an individual who had been bailed out by The Bail Project.

In January, Sterling provided gut-wrenching testimony before the Indiana House of Representatives and separately to the State Senate. **House Bill 1300** passed both houses in late February and was signed into law Wednesday by Governor Eric Holcomb.

Upon passage of HB 1300, Nikki Sterling offered the following statement:

“I am extremely pleased and grateful that Indiana House Bill 1300 was passed by the legislature and signed into law by Governor Holcomb.

“Since the senseless murder of my son, Dylan, this past October, I vowed to do everything in my power to save other families from the unbearable and preventable pain of losing a loved one in the manner in which I lost my son. In the process, I hoped to carry on Dylan’s legacy, which was all about helping others. I am very grateful to the men and women of the Indiana legislature who put the real victims of violent crime first.

“I wish to offer special thanks to Representatives Peggy Mayfield and Donna Schaibley, and Senators Aaron Freeman, Jack Sandlin and Michael Young who fought for this bill. From the bottom of my heart, I will never forget their dedication to public safety and to the memory of Dylan and other victims and their families.”

Sterling had worked for the passage of a bill that would prevent charitable bail funds from bailing out offenders charged with a violent crime or with a record of previous convictions of violent crime. The Senate introduced a bill (Senate Bill 8) addressing those issues in January. The House of Representatives’ version, HB 1300, was passed by both houses earlier this month.

The attention Sterling has brought to the problems concerning unregulated charitable bail funds through the senseless murder of her son was instrumental in HB 1300’s passage.

Monday, March 21, 2022



by: Garrett Bergquist

INDIANAPOLIS (WISH) — The leader of a community-based violence interruption network on Monday said he hopes a set of legislation targeting crime works as advertised.

Republicans in the state Senate prioritized responding to Indianapolis' violent crime rate during this spring's legislative session.

The centerpiece of their effort was a bill to prohibit nonprofit bail organizations from posting bail for someone accused of a violent crime or for a felony suspect with a prior conviction for a violent crime. The bill also requires such organizations to register with the state insurance commissioner if they bail out more than three people in six months.

Gov. Eric Holcomb signed the bill into law on March 15. Four days before then, the governor signed a bill that classifies tampering with an electronic monitoring bracelet as an escape and directs law enforcement to respond accordingly.

The Rev. Dr. Charles Harrison of the Indianapolis Ten Point Coalition says it's too soon to say for sure how the GOP crime bill package will impact conditions on Indianapolis' streets. He says he hopes the bills help prevent repeat offenders from committing additional crimes.

The bail bill drew by far the most debate during session.

Lawmakers held up the case of Dylan McGinnis as proof of the need for regulations for bail nonprofits. McGinnis was murdered in Indianapolis on Oct. 1. Prosecutors said the man accused of killing him was out on bail paid for by the national nonprofit, The Bail Project.

McGinnis' mother, Nikki Sterling, says she's pleased legislators listened to the needs of people like her and passed the bill into law.

The Bail Project's national policy director, Twyla Carter, says the bill unfairly singles out nonprofits without imposing similar restrictions on anyone else paying bail, including the for-profit bail bond industry. Carter says in McGinnis' case, the man accused of killing him had a surety bond that was covered by a traditional bail bond agency in addition to the cash amount The Bail Project paid.

The bail bill originally would have capped the amount nonprofits could put forward and prohibited them from tackling any cases involving felonies. Harrison says lawmakers' decision to remove those provisions from the final bill was a good compromise. Harrison says he felt lawmakers listened to the concerns of Indianapolis' public safety advocates, but more in-depth work is needed.

"I think, if there was one thing that needed to be focused on a little greater, probably was addressing what the root causes of the violence is," Harrison said. "I think that's a big issue. What's driving the violence on the street and what could be done by state legislators in supporting cities like Indianapolis?"

Lawmakers ultimately did not approve a bill that would have allowed the attorney general to name a special prosecutor in jurisdictions where the prosecutor refused to prosecute certain crimes. The bill passed the Senate but died in the House.

Tuesday, March 22, 2022

[OPINION](#)//[EDITORIALS](#)

Editorial: Why didn't Ogg, judges vote to ban cheap bail for dangerous Harris County defendants?

By The Editorial Board



A full room at Harris County Commissioners Court as the county's bail bond board met to consider the recommendation to require that bonding companies collect a minimum 10 percent of bail before posting a surety bond, on Wednesday, March 9, 2022, in Houston.

Godofredo A. Vázquez, Houston Chronicle / Staff photographer

Paul Castro has no idea how much money his son's alleged killer paid to get out of jail.

All he knows is that Gerald Wayne Williams, a convicted felon who had just completed a 13-year prison sentence for armed robbery, somehow came up with the funds to post a \$350,000 bond and walk free one month after turning himself into the police.

Williams, 34, allegedly shot and killed David Castro, 17, in a fit of road rage following an Astros game last July. In an ideal criminal justice system, the \$350,000 bond set by District Court Judge Ana Martinez — well above the average \$119,000 bond for murder charges — would be more than enough to ensure he remained behind bars. But not in Harris County.

Castro, a longtime local educator and now grieving father, stood at a podium before the Harris County Bail Bonds Board on Mar. 10, trying to illustrate the yawning gap in the

county's bail bond policy that he believes allowed Williams to walk free while awaiting trial.

"His bondsman is known for accepting amounts as low as 2 percent," Castro said. "My son's life was traded for \$7,000." The bondsman, Sheba Muharib, declined to comment, citing client confidentiality.

Harris County bondsmen have for years been cutting deals on an increasing number of violent felonies.

Castro hoped to persuade the board to pass a measure that would have forced bail bondsmen to charge their clients a fee of at least 10 percent.

Alas, the resolution failed. Eight of the 11 board members were present for the vote. Four supported the measure; two opposed it.

Meanwhile, Judge Angela Rodriguez, the board's interim chair, and Harris County District Attorney Kim Ogg abstained from voting. The question is why. It seemed a rare opportunity to improve public safety with a measure that already had bipartisan backing from Harris County commissioners.

For all the partisan bickering over Houston's two-year crime spike, commissioners unanimously agreed that requiring a fee of 10 percent, once considered standard, was a sensible measure for the bail bonds board to consider.

A recent Houston Chronicle investigation found that bail bondsmen are charging lower fees and requiring much smaller cash payments to secure bonds — sometimes as small as 1 or 2 percent. Some even offer payment plans.

These deals further hobble an already faulty cash bail system. In our view, someone's ability to pay or borrow a certain amount of money to secure their freedom before trial is an inherently unreliable method of protecting the community from dangerous people. Pre-trial jailing decisions should be based only on the person's risk of fleeing or harming someone else.

But as long as cash bail is the law of the land, and as long as the Texas Constitution guarantees almost all defendants an initial right to bail, the system should operate as consistently as possible. Texans elect judges, not bondsmen, to keep our community safe but judges can't do that if the bonds they set in court are being undercut later by bondsmen allowing defendants to pay only a sliver of the amount the judge required for pre-trial release. Sure, some judges have been too lenient in their own decisions but our society's over-reliance on the private bail bonds industry adds another layer of dysfunction.

Bondsmen are business people beholden to their bottom lines. The low fees they're charging are apparently in part a market response to misdemeanor bail reform, which

essentially ended cash bail for low-risk, nonviolent offenders and shrunk the industry's customer base.

Bondsmen, whose profit motives conflict with their desire to protect the public, have no business with such vast discretion over bond fees. As private entities, they're not obligated to disclose how much they're charging defendants and that leaves judges in the dark as to whether the bond they set was high enough to keep a high-risk defendant off the streets.

That isn't fair to the community left in harm's way, nor to the judges unfairly held responsible for tragic outcomes.

In the March primary, voters booted six incumbent criminal court judges in Harris County, in part because of displeasure over how they perceived the judges handled bail for violent offenders.

It's baffling to us that, given the stakes, two criminal court judges on the bail bonds board, Amy Martin and Shannon Baldwin, didn't vote on the minimum bail fee proposal. Why wouldn't they jump at a chance to shore up judges' power to determine bail amounts? We couldn't get an answer.

Ogg's apparent hypocrisy on this issue is also glaring. As a frequent critic of judges for letting high-risk offenders walk free, why didn't she weigh in on the proposal? DA spokesman Dane Schiller told the editorial board she did not feel it was strong enough and that there were "serious concerns about its legality and enforceability."

We're not persuaded.

We're glad Sen. John Whitmire, D-Houston, has proposed mandating a 10 percent bond fee statewide. We'd like to see lawmakers go even further requiring surety companies that underwrite bonds to audit each bail bond company and share those results, as it's done in Minnesota. If bondsmen are giving unusually generous terms to suspects in violent cases who go on to reoffend, the public should know about it.

But any statewide changes would have to wait until the 2023 legislative session. Until then, we need local action. Commissioners Court took a much-needed step toward greater transparency last month by introducing a dashboard that analyzes bail amounts for felony and misdemeanor cases from 2017 through 2021. Missing from the dashboard, however, are the puny surety fees some bondsmen are charging.

The bail bonds board should help remedy this problem when it convenes next month. Municipal Court Judge J. Elaine Marshall, who did not vote due to a family emergency, told the Chronicle she would have voted yes on the 10 percent minimum, leading to its passage.

Setting a floor for bail bond fees isn't a panacea for our flawed criminal justice system. But it's an important step that, inexplicably, is being opposed or ignored by some of the same politicians and prosecutors who spare no scrutiny for judges and others they perceive as "soft on crime."

What's softer than letting a dangerous repeat offender out on the streets on a bargain basement bond deal? Nothing. The practice should be banned and anyone who cares about public safety should fight to make that happen.

IndyStar.

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How a media frenzy and Republican politics led to a new law targeting The Bail Project

Ryan Martin, Tony Cook and Lawrence Andrea

Indianapolis Star

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'They took a chance on me': The Bail Project helps low-level offenders who can't pay

Kathleen Merchant is getting her life together after The Bail Project bailed her out of jail. *Kelly Wilkinson, kelly.wilkinson@indystar.com*

Aaron Freeman read a list of 10 names to his fellow Indiana state senators in January. Each name represented someone accused of a violent crime who had been bailed out of jail by The Bail Project.

There was a problem, though, with Freeman's list.

At least five people were out of jail because someone else — not The Bail Project — posted their bonds. And for two others, the nonprofit paid bail in earlier cases but was not responsible for their most recent releases from jail.

The inaccurate list shared by Freeman, an Indianapolis Republican, is just one example among many demonstrating the misinformation surrounding the passage of a new law designed to crack down on charitable bail organizations. Republican lawmakers pitched the legislation as part of a package of bills to address Indianapolis' struggle with violence.



April Angermeier, right, gets ready to take a photo of Kathleen Merchant, Thursday, Sept. 19, 2019. Angermeier is with The Bail Project. The national nonprofit is now in Indianapolis. It pays the bail for low-level offenders who otherwise wouldn't be able to afford bail and would have to await trial in jail. Merchant was one of the people helped by The Bail Project. They paid her \$500 bail to get her released in June, 2019. Her case has since been dismissed.

Kelly Wilkinson/IndyStar

Bail is money defendants are required to put up to ensure they appear in court. If they don't show up, the court can keep the money. The Bail Project, which started operating in Indianapolis at the end of 2018, covers the cost of bail to ensure people are not stuck in jail prior to trial simply because they are poor.

But the nonprofit organization's time in Indianapolis is now under threat after the revelations that it played a role in bailing out two people who were later charged with murder and a third person who was later accused of stabbing two Indianapolis police officers.

The Indianapolis police union has breathlessly challenged the organization on social media. Republican lawmakers have echoed the attacks. And local media have repeatedly published incomplete stories or misleading statistics that fueled those criticisms.

The narrative was clear: The Bail Project is a major contributor to Indianapolis' record number of homicides.

An IndyStar analysis, however, reveals a much different picture. Reporters examined the 225 murder cases filed in Marion County since the nonprofit's inception in December 2018. IndyStar could identify just 37 people, or 16%, who were out of jail in a pending Indiana case prior to the homicides. And of those? Three were linked to The Bail Project.

That represents 1% of the murder cases filed in Marion County in that time period. And it represents less than 1% of the people bailed out by The Bail Project.

"We're talking about really tiny numbers," said Eric Grommon, an IUPUI criminologist who has studied pretrial release in Marion County. "We look at tragic exceptions, and not the norms, when we're creating legislation."



Barbara Roach Bail Bonds sits facing the City-County Building on Friday, March 18, 2022, along Delaware Street in Indianapolis.
Mykal McElDowney/IndyStar

Commercial bond agents bailed out more people who were later accused of murder. IndyStar's analysis found 10 cases. One company alone — Barbara Roach Bail Bonds — matched The Bail Project's total.

No one shared that information in the halls of the Indiana Statehouse, where the commercial bond industry has spent hundreds of thousands of dollars over the past decade to influence legislation.

Instead, what emerged was House Bill 1300, which focused solely on charitable bail organizations. The bill prevents such groups from bailing out

people accused of violent crimes; requires them to register with the Indiana Department of Insurance; and bans them from receiving taxpayer dollars.

The commercial bond industry is still free to bail out whoever it wants. And bond agents stand to benefit from the loss of a nonprofit competitor. Unlike The Bail Project, they typically charge a 10% fee for bonds that often run into the tens of thousands of dollars. The agents, meanwhile, promise the court to cover the full amount if the defendants fail to show up. They also hold the defendants financially responsible.

"A small number of headlines from maybe one Twitter account and one news outlet are completely driving this conversation," said Jasmine Heiss, a researcher and project director for The Vera Institute of Justice, which advocates for alternatives to jailing. "That's how politics overtake good policy, and people are harmed in the process."

The right to bail is enshrined in Indiana's constitution — right alongside the right to bear arms. But Heiss said the legislation erodes that right. As a result, more low-income Hoosiers will remain unnecessarily in jail.

Gov. Eric Holcomb signed the new restrictions into law this month. It marks a victory for the commercial bond industry at a time when similar battles are playing out in other states, such as Florida, Kentucky, Texas, Virginia and Washington.

But if Indiana lawmakers hoped to significantly address Indianapolis' homicide problem, the numbers suggest their legislation is going to fall short. At most, the new law would have affected three cases involving The Bail Project.

One of those cases, in particular, illustrates the difficulty of trying to find a simple answer to a complicated problem.

The misinformed case of Travis Lang

Last October, a double shooting on the east side left one man dead and a woman injured. Police arrested Travis Lang, now 24, saying the shooting occurred during a planned drug deal that escalated into an armed robbery and homicide.

The case generated intense interest from Fox59, WRTV-6 and WISH-8. Each aired news stories emphasizing a detail: At the time of the homicide, they claimed, Lang was free because The Bail Project paid his bail.

Conservative personalities, too, pushed that narrative.

"Really hitting it out of the park there, Bail Project Indianapolis!" wrote the Hammer and Nigel Show, a conservative talk show on WIBC-FM (93.1).

The coverage, however, failed to include a full picture of what happened.

It is true that The Bail Project paid cash bonds in two of Lang's low-level felony cases: residential entry and cocaine possession.

But the nonprofit did not act alone. In two other cases, judges also set large surety bonds. Those are typically for larger amounts and are used in cases involving more serious charges. The defendant can either pay the surety bond's total sum or, more commonly, rely on a commercial bail agent.

The Bail Project cannot pay surety bonds because it is not a licensed bail agent.

Records show that two companies, Barbara Roach Bail Bonds and Smith American Bonds, covered Lang's two surety bonds.

Brent Smith, owner of Smith American Bail Bonds, downplayed the charges he bailed out Lang on — felony resisting law enforcement and a driving infraction — and emphasized they came two years before the man was accused of murder. Smith said he looks at previous charges before bailing someone out, but it's impossible to predict someone's actions.

"Fingers are being pointed to the prosecutor, it's being pointed at the judges, it's being pointed at the bondsmen, it's being pointed at The Bail Project," Smith told IndyStar. "As a bondsman, all I'm saying is: We don't set bonds."

Barbara Roach, who more recently bailed Lang out, did not respond to inquiries about her company's role in that case and others.

Lang was arrested again in July and charged with a misdemeanor. It was his last time in jail, records show, before the homicide. Lang would have remained there if someone hadn't bailed him out.

But someone did. It was not The Bail Project, though. The group said it declined to post bond in that case. Records show it was a friend or family member.

Put simply: The Bail Project paid bail in two of Lang's pending cases. Commercial agents posted bonds in two. And a friend or family member paid the most recent bail.

But the flurry of headlines — and the Republican legislation that followed — did not account for the full picture. The Bail Project suddenly found itself swept into the center of a brewing political battle.

Despite the bail industry's role in securing Lang's release, its trade group sent numerous press releases citing the alleged murder as a cautionary tale against the use of charitable bail funds.

The press releases did not note that commercial bond agents also posted bonds in Lang's cases.

The political battle in Indianapolis

If the bond industry had a financial incentive for targeting The Bail Project, Indianapolis Republicans had a political one.

Despite nearly total control of local offices, Democrats have been unable to reverse a yearslong rise in homicides. Republicans capitalized on that vulnerability by attacking The Bail Project, which received \$150,000 in city grants from 2019 to 2021.



As a Subito sub shop employee opens a garage door near their store Friday, March 18, 2022, as traffic moves along Delaware Street in Indianapolis. Sandwiched near the City-County Building and the sub shop sits two bail bond companies, Woods Bail Bonds and Barbara Roach Bail Bonds. *Mykal McElDowney/IndyStar*

Local Republicans latched onto the media coverage to question why Democrats Mayor Joe Hogsett and City-County Council President Vop Osili

would allow The Bail Project to receive public funds. Each new headline created a fresh opening for Republicans.

"Another Taxpayer-Funded Tragedy," a Marion County Republican Party news release trumpeted after two IMPD officers were stabbed in December. The suspect had been bailed out on another charge by The Bail Project in April.

The statement did not mention a judge had released the suspect without bail in another case in August. That's why the man was out of jail when the officers were ambushed.

Others piled on around that time. Indianapolis Fraternal Order of Police President Rick Snyder called on lawmakers to address charitable bail groups. Even one of the state's highest officeholders, U.S. Sen. Mike Braun, jumped into the fray with a letter to Holcomb calling for regulations to be put on The Bail Project.

The fervor culminated in a package of bills carried by Republican state senators from Indianapolis. That included Freeman's bill targeting The Bail Project.

A lot of blame to go around'

When asked about his inaccurate list, Freeman continued to insist each name he read was connected to The Bail Project.

"And even if one was not," Freeman told IndyStar, "some (cases) are egregious, and these people need to be regulated."



State Sen. Aaron Freeman *Indiana Senate Republicans*

His primary goal, he noted, was to prevent charitable bail organizations like The Bail Project from receiving public tax dollars. "I certainly achieved my goal," Freeman said.

"These charitable bail folks were in the Wild West," Freeman added. "They didn't have any requirements at all or restrictions in code."

Bond agents are already regulated by the Department of Insurance, he said, and have financial motives to ensure clients return to court. If someone skips out on a court date, for example, a bond agent can go find the person. That's not the case with The Bail Project.

Representatives of the commercial bail industry emphasized those differences during the legislative session. Still, those factors did not prevent 10 clients of bail agents from becoming murder suspects.

American Bail Coalition executive director Jeff Clayton said "it's not surprising" bail agents bonded out more people who were later accused of murder than The Bail Project.

"We post a whole heck of a lot more bonds than they do," he said. "I would expect our numbers to be higher with higher risk cases."

The Bail Project paid bail in about 1,000 cases in Marion County, according to a report it shared with IndyStar. During that time, just over 5,100 surety bonds, most often involving a bail agent, were paid in Marion County.

Clayton deflected when asked about cases such as Lang's in which the bond industry played a role.

He said the \$150 cash bond that secured Lang's most recent release from jail prior to the murder was "low." Although the charge was a misdemeanor, Lang had four pending felony cases at the time. That bond, paid by friend or family member, was the "final straw," Clayton said.

"I guess in tragic cases," Clayton said, "there's a lot of blame to go around."

That's exactly why opponents of the new law are so frustrated. Amid all the finger pointing, only one organization was targeted.

Twyla Carter, the national legal and policy director at The Bail Project, said Holcomb's signing of the bill "formalizes the double standard" that people without money will remain in jail while those with money can get out.

"It certainly entrenches what we know to be an attack on us, an attack on poor people and confirms a vendor bill that was designed to pad the pockets of the bail bond industry," Carter told IndyStar.

With the legislative fight over, The Bail Project is now turning its attention to another challenge — this one inside Marion County's courtrooms.

The Bail Project's future is under threat

Marion County judges initially welcomed The Bail Project in 2018. They saw it as an opportunity to reduce jail crowding, which would cut costs for the county.

But the group's promise to provide follow-up services — rides to court, help with finding childcare or employment — was the real selling point.

The court agreed in December 2018 to return the group's bail money at the end of a criminal case as long as the defendant showed up for court dates. That was an exception because bail is supposed to be returned to the defendant regardless of who posted it.

As criticism reached a crescendo last December, though, the court suspended its support for the group.

Many judges believed The Bail Project fell short of its promise to provide services, Presiding Marion Superior Judge Amy Jones told IndyStar. The group also failed on some occasions to provide quarterly reports the court had requested, she said.



Judge Amy Jones speaks during the Program on Law and State Government 20th Annual Fellowship Symposium on gun laws and gun violence Friday, Oct. 1, 2021, at the Robert H. McKinney School of Law in Indianapolis. *Michelle Pemberton/IndyStar*

In response to the suspension, The Bail Project produced a report it provided to judges earlier this month. In the report, the group says its clients were re-arrested at a rate 20% lower than commercial bail bond clients. It also says its clients had a 95% appearance rate.

The report, however, includes no data on the number of services provided. The group blamed it on its rapid expansion.

That's a big problem, Jones said.

When judges reduce someone's bond, they are taking a risk. But they are willing to do so, Jones said, when they believe a defendant has the necessary support to stay out of trouble and return to court. Some people bring a pastor, employer or landlord. Jones considered The Bail Project to be another type of support.

Over time, though, The Bail Project's representatives appeared in court less often, Jones said. That coincided with the court's decision to preemptively release more people accused in low-level, non-violent crimes. Since those cases no longer needed bail, Jones said, it seemed as if The Bail Project began intervening in more serious cases.

"When you've got a group that came into our community and made these assertions that they were going to do certain things, I think the judges relied upon that and thought that was happening," Jones said. "So it makes it a bigger deal when one of their people goes out and gets arrested and charged with a subsequent case."

The judges are planning to meet this month to discuss The Bail Project's future in Marion County.

In the meantime, Jones said it does not matter who bails someone out of jail, whether it is a charitable bail organization or a bail bond company. Even when defendants violate the terms of their pretrial release, Jones said, bail bond companies are rarely required to pay the full bond amounts.

"Most of them make a few phone calls and they file something with the court. 'Um, will you release us from this?'" she said.

Jones also expressed skepticism about the bail bond industry's claims that agents do a better job compelling people to appear in court or keeping the public safe.

"When people think bond agents," Jones said, "they think we've got like a bunch of Dog the Bounty Hunters around Indianapolis and they're out tracking people down."

It's really just a financial arrangement, she said: "It's basically insurance."

A murder arrest

Two days before Gov. Holcomb approved new restrictions on charitable bail organizations, Indianapolis Metropolitan Police Department officers made an arrest.

Investigators say three people robbed a man who had been selling clothes from his car. Then someone shot him. Prosecutors charged 32-year-old Julius Thomas with murder.

At the time of the homicide, Thomas had been out of jail while facing two other felony cases. One is a gun charge. In the other, he is accused of leading state police on a high speed chase — nearly striking two other vehicles — before crashing into a guard rail.

Records show Thomas also has been convicted of felonies in at least four other cases, including robbery, unlawful possession of a gun and resisting law enforcement.

No Indianapolis media reported on Thomas' prior convictions or his two pending charges at the time of the homicide.

He was not out of jail because of The Bail Project.

It was Barbara Roach Bail Bonds.

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Desert Sun.

PART OF THE USA TODAY NETWORK

California bail agents dealt drugs, committed fraud and drove drunk. They've kept their licenses



Christopher Damien

Palm Springs Desert Sun

March 28, 2022



Assault with a deadly weapon. Burglary and grand theft. Receiving stolen property. Perjury, domestic violence, and driving under the influence. Cocaine possession, drug and weapon sales, and attempting to elude police.

These are just a few of the felonies that bail agents in California have been convicted of in the past decade. And in dozens of cases, they've been allowed to keep working, signing bail contracts with people accused of crimes and retaining the power to arrest those clients at a moment's notice.

The California Department of Insurance, the state agency responsible for overseeing California's bail industry, has granted or maintained bail agent licenses for 34 felons since 2010, according to investigation records provided by the department to The Desert Sun.

There are currently just under 2,000 bail agents working in the state. Records going back to 2010 show the department investigated 76 agents or applicants due to felony convictions, either committed before applying for bail licenses or while licensed. While 54% of them had their licenses revoked or denied, the rest — 34 people — were permitted to work as bail agents in spite of their criminal history, and 19 felons have active licenses today.

One agent, Jose Navarro, has two felony convictions for drug sales on his record and was granted a license in 2013. The department is currently moving to revoke his license for illegally hiring another felon, Fabian Hector Herrera, to arrest a man in Palm Springs in April 2021.

Herrera, who was barred from working as a bounty hunter because of his felony record, fatally shot David Spann during the confrontation and has since been charged with his murder. Also charged was his mother, who purchased him the firearm and accompanied him as backup on the night of the killing.

But while Herrera was not permitted to make the arrest due to his criminal history, his boss, Navarro, also a felon, would have been — because he has a bail agent license.



Navarro and Melissa Lippert, the other bail agent who ordered Spann's arrest, however, could be charged with a misdemeanor for illegally hiring Herrera under California's bail laws. No charges have been filed to date. Although the fatal shooting happened almost a year ago, Lippert and Navarro currently have active licenses. Lippert's attorney says his client has done nothing wrong. Navarro has not responded to requests for comment from The Desert Sun. The hearing on their case is set for June.

The fatal shooting has put a spotlight on who is being licensed to do bail work and how the Department of Insurance has conducted its oversight responsibilities.

Deputy Insurance Commissioner Michael Soller said the data used to report this story shows the department has not shied away from using its power to revoke licenses.

"We stand with our fellow law enforcement agencies in protecting the public from actions by bail agents that threaten people's safety and holding them accountable when they violate California law and the terms of their license," Soller said.

State Assemblymember Marc Levine, D-Marin County, is challenging Insurance Commissioner Ricardo Lara for the job in the coming election. He said that Spann's shooting shows California needs increased standards and training in the bail industry.

"There needs to be a regulation that puts an end to these warrantless searches and seizures, that implement background checks, that require licensing for bounty hunters, and it needs to be under a single regulation," Levine said.

"Bail agents are acting, in effect, as adjunct law enforcement without having the standards of a police officer. We need to raise the level of professionalism in the industry and we'll hopefully see far better outcomes in communities."



Reporting convictions, an honor system

Bail agents work directly with courts and jails and have substantial power over the freedom of people charged with crimes but not yet convicted. They oversee thousands of unlicensed bounty hunters who can be dispatched to arrest people who have allegedly violated the terms of their bail agreements, which are private contracts. It's big business: Bail agents collect about \$520 million for approximately 175,000 bail bonds each year in California, data provided by the department up to 2020 shows.

Yet bail agents are not subject to oversight from the California Department of Justice or any other agency working in the criminal justice system. Instead, the Department of Insurance oversees the bail industry.

Much like the license needed to be an insurance broker, the department's bail agent licensing process is meant to ensure that people are meeting legal requirements and conducting business ethically.

The Desert Sun reviewed 283 administrative investigations the department has conducted since 2010 — these are also known as "special enforcement actions" — and questioned the department about its disciplinary process.

Soller said the department investigates complaints about bail workers made by the public, bail agents, police and insurance companies. If there's evidence of a crime, it is referred to a county district attorney for prosecution. If there's evidence of an administrative violation of bail laws, it's reviewed by the department's legal division.

Of the bail agents and agencies investigated over the last decade, 271 were disciplined: 139 had their licenses restricted, 10 had them temporarily suspended, and 102 had them revoked. But the revocations aren't always permanent: The Desert Sun found that 14 revoked licenses have been reinstated and are currently active.

Like any civilian, bail agents can be charged with crimes if they break the law. And they are, on a regular basis. The department has opened 196 investigations in connection with criminal convictions over the last decade, 120 for misdemeanors and 76 for felonies.

About 70 convictions, both felony and misdemeanor, were for driving under the influence, some resulting in collisions causing serious bodily injury. About 40 convictions were for illegal schemes to solicit bail business among the incarcerated or their relatives. There were 23 for domestic violence incidents. And 35 of the felony convictions were for drug possession and sales, with some related to conspiracies to distribute drugs in jails or prisons.

Of the 196 bail agents with felony or misdemeanor criminal records, about 120 were convicted of more than one crime — about 40 of whom have active licenses.

Bail agents are required, Soller said, to report criminal charges or convictions to the department within 30 days, but it's something of an honor system. The Department of Insurance largely relies on other authorities or the agents themselves to report the cases. Consequently, the number of bail agents working despite criminal charges or convictions is very likely an undercount.

"We do not receive notification from courts of charges being filed against bail agents," Soller said. "If another law enforcement agency files charges against a bail agent, we would not know about it unless they request our assistance."

Working in the justice system with convictions

Bail agents have certain powers to arrest fugitives, much like police officers. But cops can't have felony convictions and keep their jobs.

Bail agent David Antonio Richardson, of Antioch, was separately convicted of receiving stolen property, cocaine possession and selling PCP. Jimmy Rosales, of Los Angeles, was convicted of a domestic violence offense and of failure to appear in court. Javier Maldonado, of Sacramento, has two convictions for selling cocaine and one for attempting to elude police. Frances Carrillo, of Los Angeles, was convicted five times for possessing a controlled substance.

They are among 19 currently licensed bail agents with felony convictions. Most did not return The Desert Sun's request for comment.

Three of those with felony convictions had their licenses revoked but later reapplied and have active licenses in the department's system.

Jorge Luis Munoz, of Whittier had his license revoked in 2013, after being convicted of aiding a criminal. He was again issued a license in 2018. Thomas Esparza, of Los Angeles, had his license revoked after a felony fraud conviction. He was reissued a license in 2018.

Oscar Hernandez, of Bakersfield, was convicted of a felony corporal injury of a cohabitant in Los Angeles County in 2015 and his license was revoked the next year. He was granted a restricted license in 2018. His license was then suspended in 2019 for a DUI conviction. But it was reinstated and is good into 2024, the department reported.

Navarro, the bail agent who illegally hired the bounty hunter who killed the Palm Springs man, was issued a restricted license in 2013 and an unrestricted license in 2019, despite his felony convictions in L.A. County. The convictions were from about a decade before he attempted to become a bail agent.

"Like with all licensees, the Department of Insurance conducts background checks and reviews public records prior to issuing a bail agent license and when renewing bail agent licenses," Soller said. "A criminal record is not an automatic disqualification but is an important factor we use to protect the public."

Bail agents interviewed for this story said that the department does not always do background checks when licenses are renewed.

Some bail agents, like Navarro, committed their felony offenses prior to becoming agents. Trino Richard Savala, of Whittier, had several convictions on his record when he applied for a license in 2009. He had been convicted of tampering with the identification marks on a firearm in 1989, drug possession in 1990, receiving stolen property in 1995 and assault with a deadly weapon in 1998. All were felonies. He was issued a restricted license in 2010.

Savala is the first to admit there are some shady people in the industry. But, he said in an interview, he's no longer one of them. After a stint as a professional boxer, he said, he "got into some trouble."

"I was a validated gang member. I sold drugs," he said. "I was denied a license the first time I tried. I would have denied me too."

He said he believes his community work, as a school counselor and as a drug and alcohol counselor, helped him make his case to be granted a license. Savala said his criminal history has provided him with insight that helps him do bail work.

"I'm an ex-criminal," he said. "I know how they think and I know the streets really well."

Savala isn't alone in saying that a criminal record helps him do his work.

Robert Ryan Elias, of Riverside, was convicted of assault with a deadly weapon. He served time in jail for that offense and another for receiving stolen property. He was convicted of driving under the influence and driving without a license several times.

He was granted a bail agent license in 2019, in part, due to a character reference provided by his employer, Lee Michael Schneider of DMCG, a large bail agency that does business under the name Bail Hotline. The company has more than 30 offices, with one in Riverside. Bail Hotline employs seven agents on the "enforcement actions" list.

Schneider told the Department of Insurance that Elias was a reliable employee assisting the company's bail operations, but not negotiating bail bonds as an agent. He was compassionate to clients, Schneider said, and he would be promoted to bail agent if granted a license.

Schneider testified to hiring other bail agents with criminal histories, according to the hearing report: "The company has found that criminal convictions do not necessarily make an employee untrustworthy," he said.

Schneider has also been granted a bail license despite two felony convictions, for burglary and auto theft. He did not return The Desert Sun's request for comment for this story.



'Restricted' licenses granted

One common, and largely unexplained, practice of the Department of Insurance is to revoke a license and yet issue a restricted license to an agent in its place. The Desert Sun found at least 40 agents were provided restricted licenses after revocation, but the department's records are not always clear on this.

Ryan Adam Mullinax, of San Diego, was convicted of driving under the influence and a domestic violence offense. He had his license revoked in 2013 but he was issued a restricted license the following year. David Manuel Matamoros, of Van Nuys, has three convictions for domestic violence incidences and contempt of court. He had his license revoked in 2004, but was issued a restricted license in 2010. The restrictions have since been removed.

In fact, a restricted license does not limit the type of work an agent can do.

Soller, the deputy insurance commissioner, said that a license restriction, rather, expedites the discipline process should the agent engage in more

misconduct: "Any violations by the bail agent, who holds a restricted license, could allow the Department to immediately revoke the license — unlike a license without restrictions, which would require a hearing process under California law."

California laws aim to prevent bail agents from soliciting business in ways that exploit people who have just been arrested. Bail agreements can be costly and shackle defendants with debt for years.

Bail agent Kent Joseph Morgan, of Banning, was convicted of a misdemeanor for soliciting bail from arrestees in illegal ways. Larissa Langley, of San Luis Obispo, had her license revoked for a similar scheme. But both now have active licenses, according to department records.

Such schemes — which can involve bail companies essentially paying inmates to refer clients to them — have reached stunning levels of size and complexity around the state.

One scheme in Riverside County resulted in criminal charges being filed against 13 people. Bail agents Terry Tenwick, Humberto Gavilanes and Jane Fillian were convicted in the scheme — yet they still have active licenses.

Two other bail agents convicted in the case, Michael Testi and Robert Spencer Douglass, surrendered their licenses soon after charges were filed in 2004. Douglass was issued a restricted license in 2009. The restrictions were removed in 2015 and it appears he worked in the industry until his license expired last year.

One of the largest such schemes on record happened in 2015 in Santa Clara County. KQED reported that more than 30 bail agency employees were charged for soliciting bail in the county's jails.

The Desert Sun was able to confirm that 11 licenses were revoked in connection with the scheme. The Santa Clara County District Attorney's Office declined to provide information about the convictions.

But court records show that four charged in the scheme — Christian Barraza-Franco, Maria Guadalupe Mandujano, Carlos Flores, Jacob Sanchez and Arish

Leonard Rivers — pleaded to misdemeanor charges and retained their licenses.

In March 2015, Luis Roberto Ramirez had been granted a restricted license, due to a DUI on his record. By August of that year, he was among those charged in the Santa Clara scheme. Despite his involvement in that case he was permitted to keep his restricted license, which remains active.

Rivers described the investigation and criminal case by phone, from his home in the Bay Area. He said there were people involved in the scheme who were breaking laws, but his misdeeds were minor in comparison. He was ultimately accused of practicing bail work without a license in connection to phone calls he had with inmates. He said he did his mandated community service and moved on.

"Ultimately, the cases sent a message to the industry," Rivers said, adding he's still not sure "exactly what law I had broken."

Steven Hidalgo and Refugio Martinez currently have inactive licenses after the department revoked them.

Department investigators found they filed fraudulent paperwork to the DMV in an attempt to falsify a car title. They had confiscated the car from a defendant as bail collateral. Despite the defendant's efforts to contact them, the department found, they attempted to seize the car.

The Orange County Sheriff Department investigated the matter, and the Insurance Department investigators said that Martinez repeatedly lied to the deputies.

A third agent believed to be involved in the scheme, Harley Esparza, later sued the department. After having some of the accusations against him dismissed, the department ruled that the years on a restricted license were deemed adequate discipline and his license was reinstated last year.

Hidalgo disputed the allegations by phone, saying another agent was using his bond paperwork without his knowledge. He said he's since "thrown in the towel" on the bail industry.

"Bail brings out the ugly in people, the greed," Hidalgo said.

Policing the bail industry

Such incidents have fueled the efforts of activists to reform the bail system in recent years by providing evidence of tactics some bail agents employ to make more money rather than help the incarcerated.

A number of elected officials have tried to legislate away the cash bail system altogether.

Gov. Jerry Brown signed a law in 2018 that would have replaced cash bail with a system of pretrial release that would evaluate people charged with crimes on the risk the person posed to the public and the risk they might not show up to future court dates. The law was challenged by various interest groups and it was put before voters. In 2020, about 56% of Californians voted no on Proposition 25, and the current bail system was maintained.

Senate Bill 262, pending in the state Legislature, would require judges to consider the defendant's ability to pay bail before imposing it, and a return of the bail premium after the individual makes all court appearances if a charge is filed related to the arrest.

Bail industry lobbyists in Sacramento say bad apples undermine the industry's responsibility to provide the incarcerated with a way to pay for release from jail before their case is resolved. But, they say, the bail industry can be fixed.

Jeff Clayton, executive director of the American Bail Coalition, said that the focus of the legislature in recent years has been to eliminate the commercial bail industry.



"For years it was: 'end money bail.' But what does that mean?" Clayton said. "End cash bail, it's evil. That's where we were. Now we're looking at: How do we get balance? How do we get people we all think shouldn't be there, out of jail? And how do we get the people who we all think should be in jail in?"

Former Insurance Commissioner Dave Jones convened a public hearing on the bail industry in 2017 during which lawmakers, prosecutors, bail agents and bounty hunters discussed the industry's challenges.

Jones said during the hearing that while the bail industry only amounts to 2% of the state's insurance market, it accounts for more than 10% of the department's suspected violations.

The department's division chief for investigations, Kim Johnson-Woods, said during the hearing that the department's oversight branch is overwhelmed.

"Unfortunately, we lack the resources to allow for a comprehensive bail enforcement program," Johnson-Woods said. "Unlike workers compensation, automobile, health care, and life and annuity fraud, bail does not have a

dedicated funding stream to cover the cost of investigations and to provide for grant funding to DAs to prosecute the cases. The department continues to seek a dedicated funding stream for bail agent investigations and prosecutions. And until we have that we aren't able to adequately police the bail industry."

Jones released a report summarizing his recommendations after the hearing: first, that the bail industry was not working for the state's poor, and second, that the state needed to improve oversight and enforcement of the industry and the laws governing it.

He urged the public and state legislature to dedicate a funding source specifically for policing the bail industry through the insurance department. Jones provided examples of how the state had already implemented such special funds to help with the enforcement of other insurance markets.

He added that California is not "the only state that struggles to regulate the bail industry," noting Alabama, Connecticut, Mississippi and Arkansas fund regulation of the industry by levying various assessments on bonds filed or a basic annual fee for each bail agent.

"Funds are not only needed to create an aggressive prevention, investigation, and prosecution program dedicated to eliminating illegal bail practices, but also to increase outreach and educate on bail laws in California," Jones wrote.

The recommendations presented in the report were never acted on. Jones left the department and is currently running for a state senate seat in Northern California.

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[Local News](#)

Indiana mother works to get legislation passed to restrict charitable bail organizations

Lakeshore Public Radio | By [Dee Dotson](#)
Published March 31, 2022 at 12:20 PM CDT



Provided / Indiana mother and advocate Nikki Sterling with son Dylan McGinnis.

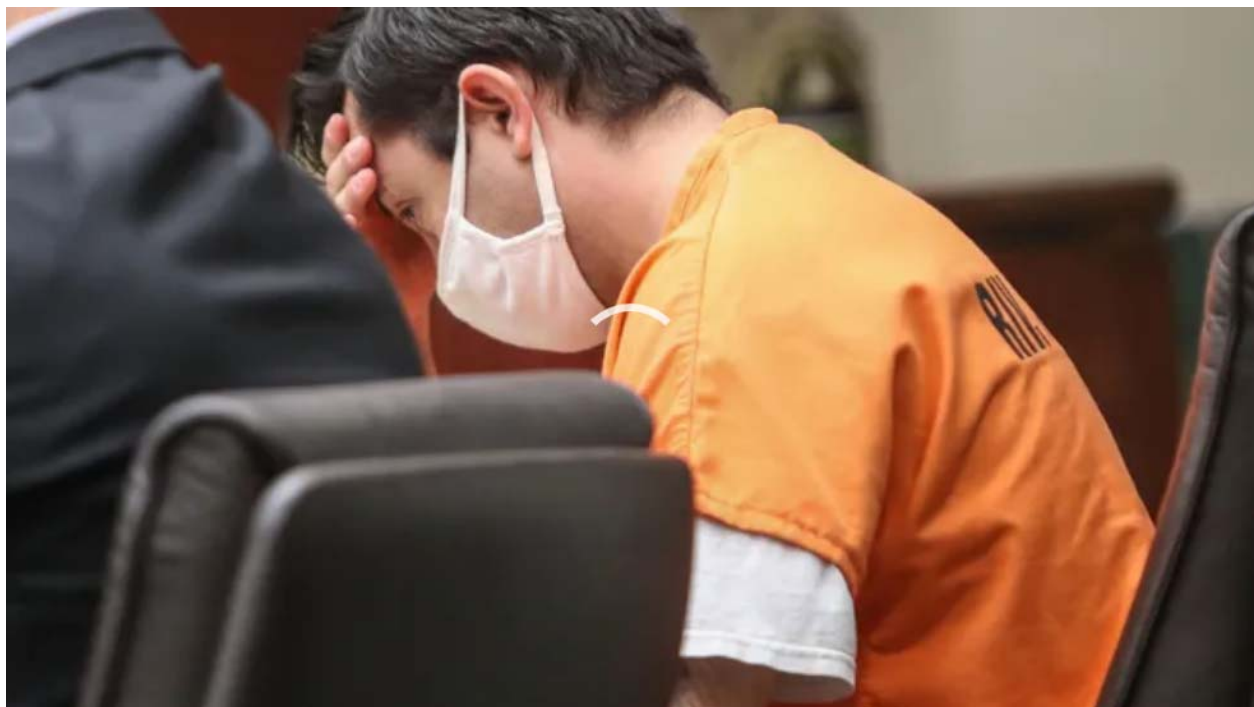
On Tuesday, March 15, 2022 Indiana Governor Eric Holcomb signed into law House Enrolled Act 1300, a bill that will prohibit charitable bail organizations from bailing out anyone who is charged with a violent crime in Indiana *or* is charged with a felony and has a prior conviction for a crime of violence. Lakeshore Public Radio's Dee Dotson recently had a chance to speak with Nikki Sterling, a staunch advocate for changes to be made in Indiana laws to regulate charitable bail funds ever since the murder of her son, Dylan McGinnis, by an individual who had been bailed out by The Bail Project. For the full details of House Enrolled Act 1300 please visit www.iga.in.gov.

Desert Sun.

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CRIME & COURTS

Bill to mandate bounty hunter licenses, AB 2043, OKd by 2 California Assembly committees



Palm Springs bounty hunter case: Security camera footage captures 2 defendants' actions

On April 23, 2021, Fabian Hector Herrera is captured attempting to kick in the door of David Spann, soon before Herrera broke into Spann's Palm Springs condo and fatally shot him. *Christopher Damien, Palm Springs Desert Sun*

Christopher Damien

Palm Springs Desert Sun

Published 5:03 p.m. PT April 20, 2022

Updated 11:00 a.m. PT April 21, 2022

A bill that would require bounty hunters working in California to be licensed passed through two State Assembly committees this week garnering support from both sides of the aisle as it picks up steam in the legislature.

The bill, AB 2043, received support Tuesday in the Assembly Public Safety Committee, with five members voting in favor and two committee members not voting. It passed the assembly's Insurance Committee on Wednesday.

The chair of the public safety committee, Assemblymember Reggie Jones-Sawyer, D-Los Angeles, who authored the bill, shared the story of the fatal shooting of David Spann last year in Palm Springs to underscore why he believes bounty hunter regulation is critical.



Assemblymember Reggie Jones-Sawyer State Of California

Bounty hunters currently "self-regulate," he said, while they have "greater authority than law enforcement by not requiring a warrant to arrest and enter someone's home."

"For example, in April 2021, a Palm Springs resident was shot and killed by a bail fugitive recovery agent despite noting that no warrants had been issued for the resident's arrest and the resident had not failed to appear in court," Jones-Sawyer said during Tuesday's meeting.

"To make matters worse, the recovery agent should not have been doing recovery work nor should have been in possession of a firearm in the first place due to his prior felony conviction. This tragic killing could have been prevented had there been more supervision and pre-employment screening for those who hired this recovery agent as well as had there been an entity to verify who all is operating in our state."

David Spann, 33, was fatally shot early on April 23, 2021, by a bounty hunter who had broken into Spann's Via Escuela condo and was attempting to arrest him. Spann had posted a bond with Melissa Lippert of Justice Bail Bonds in Temecula the month before after being arrested for allegedly violating a restraining order, a misdemeanor.

Lippert ordered Spann's arrest after a monitoring device she had required him to wear had been deactivated, her attorney said. Jose Navarro, a bail agent who works with Lippert, then sent Fabian Hector Herrera to make the arrest. Herrera and his mother, Lisa Vargas, broke into Spann's condo with a sledgehammer and called police when Spann demanded they leave his home.

Palm Springs police body camera footage, obtained by The Desert Sun, shows officers entering the condo where they found Herrera holding Spann at gunpoint. Spann repeatedly told all of them to leave as he stood in the doorway of his bathroom on the second floor

of his condo. Herrera fired the fatal shot when an officer's Tazer failed to incapacitate Spann and the officer said, "shoot." The meaning of the word has been debated in court hearings.

The footage shows several department personnel attempting to make sense of the scene and questioning whether Herrera and Vargas were permitted to attempt the arrest. Herrera, it was later found, was illegally working as a bounty hunter, as he had two felony convictions.

Herrera and Vargas have both been charged with murder, and have pleaded not guilty.



Police body camera footage capturing the lethal confrontation between David Spann of Palm Springs and two bounty hunters in April was released Wednesday, Sept. 22, 2021, shedding public light on the fatal shooting that has resulted in two murder charges. *The Desert Sun Screenshot From Police Cam Footage*

Department of Insurance expresses support for bill

Jones-Sawyer introduced AB 2043 in February. The bill would align California with 18 other states that currently require bounty hunters to be licensed in order to do bail work. License applicants would have to pass background checks by the California Department of Justice and the Federal Bureau of Investigation. They would also be required to carry liability insurance to cover damages resulting from potential misconduct or other harm to the public.

Currently, the California Department of Insurance licenses bail agents, who post bonds to release people from jail before the criminal case against them proceeds to trial. Bail agents employ bounty hunters to apprehend bail fugitives if they fail to appear in court. Bounty hunters, also called fugitive recovery agents, are required to take two classes and cannot make arrests if convicted of a felony, but they are not licensed.

This certification system appears to have been unable to prevent Herrera from working as a bounty hunter in spite of two felony convictions, according to court testimony. In the weeks after Spann's shooting, the then-Palm Springs Police Chief questioned why the state wasn't doing more to regulate bounty hunters and ensure they are doing the job safely.

Jones-Sawyer echoed those concerns, saying the insurance department has been held responsible for overseeing bounty hunters even though it doesn't license them.

"(CDI) has become the de-facto watchdog," Jones-Sawyer said.

"Despite the fact these agents are not licensed and do not pay any fees to CDI, bail fugitive recovery agents' strong financial incentive to make

arrests, often without warrants, combined with their ability to self-regulate fails to protect the public from a job that simulates law enforcement and subjects the public to dangerous and traumatic situations."



A screenshot from security camera video footage shows bounty hunter Fabian Herrera walking up to the front door of David Spann's Palm Springs condo just after 2 a.m. on April 23, 2021. *Riverside County Superior Court*

As bounty hunters have operated in this legal gray area, there is no way for the public to know how many have similarly been working illegally, Jones-Sawyer said. Even if they are found to be unfit by one employer, he added, they could just move on to another.

"When a bail recovery agent is terminated for violating California law, there's absolutely no way to track such terminations," Jones-Sawyer said. "Thus these individuals can be hired by a separate company altogether."

California Department of Insurance Deputy Legislative Director Kendra Zoller appeared at Tuesday's hearing to express the department's support of the bill.

"AB 2043 would create the first fugitive recovery agent license in California, thereby bringing long-overdue regulatory oversight to the bail bond industry and align our state with 18 other states that have existing mandatory licensure in place for bounty hunters today," Zoller said.

The Desert Sun reported that former Insurance Commissioner Dave Jones authored a report in 2018 recommending that bounty hunters be licensed, but that the recommendation was not acted on until the bill's introduction this year.

"Requiring bail fugitive recovery persons to first obtain a license prior to conducting business in this state would help curtail reckless pursuits and apprehensions of our most vulnerable population," Zoller said Tuesday.

Insurance Senior Deputy Commissioner Michael Martinez appeared at Wednesday's meeting of the Insurance Committee in support of the bill.

"This bill is needed now to raise the standard for bail fugitive recovery persons to apprehend bail fugitives as well as shine necessary light on this industry," Martinez said. "It will also strengthen the department's ability to protect the public and help prevent the future violations of law that threaten public safety."

The department of insurance has moved to revoke the licenses of the two bail agents who hired Herrera, stating they could have done more to prevent the fatal shooting. A hearing on the matter is scheduled for June; in the meantime, both agents have continued to work.

Spann's relatives have filed a wrongful death lawsuit against the bail agents, the insurance company that underwrites them, the City of Palm Springs and its police department for David Spann's death.



William Spann poses for a photo on Friday, Feb. 11, 2022, while holding a picture of his son David. Spann's family continues to demand justice, including major reforms of the bail industry. *Andy Abeyta/The Desert Sun*

Bill Spann said Wednesday it's been a somber week as the day approaches marking a year since his brother was killed. He and other family members have demanded change in the state's regulation of the bail industry and prosecution of all who were involved in the fatal shooting. While he continues to struggle with his brother's death, he expressed hope the bill will result in change and that it reflects that his family's voices are being heard.

"I know this legislation will save countless lives in the future, but if it only saves one life then my little brother will not have died in vain," Bill Spann said. "My family and I can't express how grateful we are to everyone who made this happen and how much of a ray of sunshine this brings through the dark clouds that surround the date April 23 for us now."

Mayes on lack of licensing: 'It's crazy to me'

The only opposition to the bill in both committees came from the American Bail Coalition and the Golden State Bail Agents Association. Both lobbyist groups said there was a lot of good in the measure, but the liability insurance requirement for bounty hunters could be prohibitively expensive.

"Although we signed up opposed, I'd like to say this bill is probably 95% — from our perspective — of where it needs to be," Jeff Clayton, policy director for the American Bail Coalition, said during Tuesday's hearing.

Members of the insurance committee suggested amending the bill to include a delayed implementation of the liability insurance requirement to provide time for the details of those policies to be worked out. Jones-Sawyer said he was open to the amendment.



Chad Mayes. Taya Gray/The Desert Sun

Assemblymember Chad Mayes, I-Rancho Mirage, voted in favor of the bill Wednesday and has since been named a co-author.

"As you referenced, there was an incident in my district where a bounty hunter shot and killed a resident," Mayes said. "The bounty hunter was a felon, and should not have been a bounty hunter. It's crazy to me that we don't have a system in which bounty hunters are licensed in this state and there's some recourse for the families of those who have been injured by them."

Jones-Sawyer noted in both committee meetings that he has received support for the bill from Republican colleagues, adding that one member of the insurance committee was open to helping him further develop its liability insurance components.

That committee member, Randy Voepel, a Republican who represents a vast swath of California's southern interior from Pinyon Pines to California's border with Mexico, voiced his support for the bill during its consideration Wednesday.

Voepel described his decades of professional experience in the state's insurance industry. He currently has five insurance licenses dating back to the late 1970s. "This is a great bill. I'm glad to see it. It's been needed for like the last 30 years," Voepel said.

Voepel and Jones-Sawyer said they are actively discussing how to further develop the bill and noted that more related legislation could be jointly authored in its wake.

"So we have to have some kind of accountability to ensure that there's not a reoccurrence of what happened in Palm Springs," Jones-Sawyer said.

AB 2043 will next be considered by the Assembly Appropriations Committee, but a date for that hearing has not yet been scheduled.

Christopher Damien covers public safety and the criminal justice system. He can be reached at christopher.damien@desertsun.com or follow him at [@chris_a_damien](https://twitter.com/chris_a_damien).

Wednesday, May 4, 2022

The Bail Project, ACLU sue to stop new limits on charities that pay bail for the needy



Photo by: WRTV photo

By: [Vic Ryckaert](#)

INDIANAPOLIS — The Bail Project and the ACLU of Indiana on Wednesday filed a lawsuit seeking to block a [new state law that imposes strict limits](#) on charities that pay bail for poor people who face criminal charges.

"This new law singles out charitable bail organizations in Indiana, which for all practical purposes means The Bail Project," Ken Falk, ACLU of Indiana's Legal Director, said in a statement.

"This unconstitutional attack on The Bail Project will hurt low-income Hoosiers in the criminal legal system who will have to sit in jail while presumed innocent because they cannot afford bail."

The suit filed Wednesday in the U.S. District Court in Indianapolis argues that the new law violates The Bail Project's First Amendment rights and rights under the equal protection clause.

"The Bail Project exists because the use of cash bail discriminates against the poor and erodes the presumption of innocence. The data is also clear that Black communities bear the brunt of these abuses," Twyla Carter, The Bail Project's national director of legal and policy, said. "Our goal from day one has been to demonstrate that cash bail is not needed to ensure return to court and to offer solutions for a more effective, equitable and humane pretrial system."

Gov. Eric Holcomb signed the new rules under House Enrolled Act 1300 into law on March 15. It goes into effect on July 1.

"I hope the Indiana Attorney General will vigorously defend the State of Indiana in this case to protect the citizens of the state," said Sen. Aaron Freeman, R-Indianapolis, who sponsored the Indiana Senate's version of the bill.

Nikki Sterling's son Dylan McGinnis, 24, was shot to death on Oct. 1, 2021, allegedly by a man whose bail had been paid in part by The Bail Project.

"I think (the new law) doesn't prevent them from operating within the state of Indiana," Sterling told WRTV Wednesday. "They're still allowed to operate. And really, you know,

I read in the article that it's going to impact low-income Hoosiers, but my statement would be only those that have committed violent crimes."

Marion County prosecutors charged Travis Lang with murder in McGinnis' death. Lang was free on bail in connection with a cocaine possession charge when he allegedly shot McGinnis.

Some of Lang's bail money was funded by The Bail Project.

The law, Sterling said, keeps violent criminals in jail, where they can't hurt people like her son.

"Until anybody is able to walk or spend time in my shoes, they'll never understand the importance of protecting the citizens and protecting families," Sterling said.

Under the new law, charitable bail organizations must register with the Indiana Department of Insurance and can only assist people charged with misdemeanors and non-violent felonies as long as the accused has never been previously convicted of a violent felony.

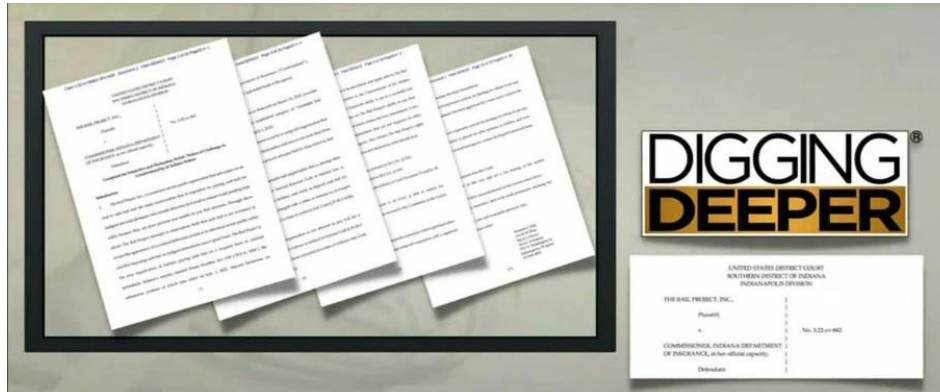
Supporters of the new law say it regulates non-profit groups like The Bail Project in the same way the state regulates private bond companies.

Opponents say the new rules make it more difficult to be poor in Indiana.

"It is unconscionable that instead of working to take money out of the system and make it more just, members of the legislature and the governor chose to target one of the only lifelines poor Hoosiers have when their liberty and due process rights are at stake," Carter said.

Thursday, May 5, 2022

Indiana sued over new bail law



The Bail Project and the ACLU are suing Indiana over a new law aimed at keeping non-profit bail groups from helping some people behind bars.

By Tom Powell and Brien McElhatten

FORT WAYNE, Ind. (WPTA) - A new law takes effect in July that targets non-profit bail providers. It would prevent them from bailing out anyone accused of a violent crime. But is the law fair?

[The Bail Project](#) is the non-profit organization at the heart of this case. Its leaders insist the legal system isn't fair to everyone and criminalizes race and poverty. The organization is working with the [ACLU](#) to sue Indiana over the new law. They're asking for an injunction to block the law as the suit works its way through the courts.

On the other side of this issue is Nikki Sterling. Her son was killed in Indianapolis in 2021. The man accused of killing him was out on bond that was approved by a judge and provided by The Bail Project.

Tom Powell interviewed Sterling and the plaintiffs in the case on ABC21 News at 7.



The Bail Project and the ACLU are suing Indiana over a law aimed at keeping non-profit bail groups from helping some people behind bars.

May 20, 2022

An Inside Look at The Bail Project's Frivolous Federal Lawsuit Against the Indiana Commissioner of Insurance



JEFFREY J. CLAYTON

Since its inception in 2017, The Bail Project has been all over the news for all the wrong reasons. Ostensibly founded to pay for the release of individuals who have been arrested and cannot afford to pay their bail, the nonprofit organization has been embroiled in one controversy after another. A growing number of individuals they have bailed out of jail have gone on to commit serious crimes while they have been freed, including sexual assault, domestic violence and even murder.

Most recently, it failed miserably in its attempt to halt any and all regulation of charitable bail in Indiana, as lawmakers passed House Bill 1300 in March. Apparently, without thinking things through, they have decided to forge ahead and make a federal case out of it. Literally. On May 4, The Bail Project, Inc. filed a lawsuit against the Commissioner, Indiana Department of Insurance in the United States District Court for the Southern District of Indiana.

By any objective measure, the basis of the suit is less than weak. The organization is attempting to sue the State of Indiana for its charitable bail laws — laws that are fundamentally identical to those currently in effect in New York and Texas. As it turns out, the laws in these states are actually far more restrictive than those signed into law recently by Governor Eric Holcomb.

On the most fundamental level, the basis on which The Bail Project even exists is highly questionable. Indiana Code, Section 27-10-2-4 already prohibited the organization from paying to bail-out individuals who have been arrested, a proposition they have not challenged in court. In fact, that law requires only a “person” to act as the surety, and that this individual must be a resident and citizen of the United States. They must also be related to the defendant by the “third degree of affinity.” While The Bail Project can argue they are merely posting cash, Indiana law requires someone to act as a surety. Cash itself does not provide this element; it is actually the person signing the bond and posting the

security who is the surety. Simply put, Indiana law does not allow corporations to post bonds unless they are licensed by the Indiana Commissioner of Insurance.

On top of that, crowdsourced bail by its very nature — which The Bail Project is — is a surety that is insufficient. Therefore, barring a judicial act, judges and/or the state legislature have the complete authority to regulate charitable bail organizations or even ban them outright on this basis. The Bail Project was challenged with this argument during the legislative hearings for House Bill 1300 and never mustered a response.

In her 2016 article on the subject in the *Hofstra Law Review*, Susan Loeb explained that there is typically little to no relationship between a defendant and the contributors donating money to a bail fund. The individuals giving money via crowdsourcing websites are almost always inherently anonymous. Accordingly, the bail money put up for their release provides absolutely zero incentive for defendants to not flee the jurisdiction. For this very reason, she also argued that the legislature is well within its authority to regulate or prohibit charitable bail funds.

The Bail Project has also made the dubious claim that its equal protection rights have been violated through the passage of House Bill 1300. In fact, the organization is the only corporate entity in Indiana that posts cash bonds, with all others posting corporate surety bonds. By state statute, only persons who are close relatives of the defendants and residents of the county in which they reside, are permitted to post cash bonds. This means The Bail Project is operating outside the law.

Neither bail agents, nor any non-resident or non-close relatives of a defendant is allowed to post cash. In addition, there are significant statutory restrictions in place limiting who may post cash bonds.

Interestingly, in Indiana, surety bonds backed by insurance corporations require two licenses issued by the insurance commissioner in order to post: (1) the bail agent's license and (2) the license from the surety insurance corporation, which is required to comply with all laws and regulations governing the business of insurance in the state. As it turns out, the only individuals or entities seeking to be completely unregulated is The Bail Project.

The Indianapolis Star's editorial board, post-facto, tried to come to the defense of The Bail Project by citing the comparatively low number of homicides committed by the defendants they bailed out. What they failed to mention is that the rate of homicides committed *per capita* on bonds they funded is far higher than those of surety bonds.

The Bail Project has stated that their defendants have a one percent homicide rate while out on bail. Meanwhile, according to bail industry statistics, surety bonds have a homicide rate of .02 percent. Thus, the rate of homicides for defendants out on bail, *per capita*, is an estimated 500 percent higher for The Bail Project versus commercial bail agents. Of course, a one percent murder rate almost sounds like a reasonably low figure — unless a family member becomes one of the victims. When statistics become flesh and blood, a different kind of reality sets in — one that provides a rational basis for regulation.

The *Star* did not include other noteworthy categories of crimes while out on bail, such as assault or use of a gun in the commission of a crime, for which they apparently did not collect or release any data. That notwithstanding, from the information available, it appears that defendants which The Bail Project has bailed out have a higher homicide rate while out on bond *per capita* than any other form of release other than those on free release through the Indiana courts. These individuals have the highest homicide rate while on bond by far.

When viewed from an objective perspective, it is abundantly clear that the Indiana legislature should be able to enact regulatory measures to reduce the number of violent defendants who are eligible to be released without sufficient sureties, especially when they may kill while out on bond. Not only is it within their purview, it is their obligation and duty to do so, unfettered by frivolous lawsuits that will only harm citizens.

Another huge flaw in The Bail Project's lawsuit is their argument that the commissioner of the Indiana Department of Insurance has claimed authority to prohibit them from engaging in the posting of bonds outside the state. There is no coherent citation for this point. The ACLU lawyers who brought the suit have clearly conflated the issues involved. It is true

that House Bill 1300 disqualifies a defendant from having their bail posted by The Bail Project in Indiana if they have committed a felony offense in another state. However, there is nothing in the act that permits extra-territorial jurisdiction of the Indiana commissioner. On its face it does not allow The Bail Project to be punished for engagement of legal contact in other states. Therefore, even if the organization could challenge the Insurance Commissioner on that point, it would require a response from the commissioner.

Of course, it is completely unknown what the commissioner's policy will be on this matter, since The Bail Fund made the decision to jump the gun and file a lawsuit based on regulations that have not yet been drafted.

The greatest absurdity of this lawsuit is the claim of protected speech under the First Amendment for the act of posting a bail bond for violent or repeat offenders, or by those who are unlicensed. Taken to its inevitable and ridiculous extremes, turning the act of posting a bail bond into a free speech issue would apply to all posters of bond who are otherwise prohibited from doing so, regardless of the cause.

Adding more fodder to this foolish argument, those in favor of the so-called "cash bail system," could claim they have an inherent right to post cash for defendants regardless of any restrictions set forth by the legislature, judges, or the Indiana Commissioner of Insurance.

Taken to its illogical conclusion, if the premise that House Bill 1300 concerns free speech is upheld, it would lead to a complete upending of the Indiana constitution. It would mean that the posting of cash for a defendant exists for a purpose completely unrelated to securing their appearance in court — and that this purpose would be considered protected speech. It would render irrelevant the sufficient sureties clause and the cases governing the granting of bail in the first place.

Using the bail system to make a political point, which The Bail Project concedes is the sole basis for its existence, delegitimizes entirely the sufficiency of the sureties posted. Despite public posturing, The Bail Project does not seek to help defendants, protect the public or ensure that justice is done — it aims to force us to a model of preventative detention. In so doing, it clearly reveals the contradiction of their argument. If the act of bailing out an individual is free speech, then it cannot also be a sufficient surety for the purpose of guaranteeing a defendant's appearance in court. One cannot have it both ways.

The Bail Project has long functioned as if it can operate beyond the boundaries of the law. This is evidenced by their many appearances at the Indiana Statehouse at which they have argued against any and all regulations. Not once have they ever expressed a willingness to accept any reasonable regulation whatsoever permitting them to operate when state law currently disallows it. This is an untenable position and represents the kind of posturing that failed to persuade the legislatures of New York and Texas, which have strictly-regulated charitable bail organizations.

Indiana clearly has the power to exercise its authority to regulate the posting of cash bonds by corporate organizations. The Bail Project has already lost its hopeless fight on the merits and we can only hope they will finally do right by the people of Indiana by giving up its pathetic and futile fight.

Wednesday, May 25, 2022

PUBLIC SAFETY

Study: Cash bail disproportionately harms Black, Latino Hoosiers in Marion County justice system



Ryan Martin
Indianapolis Star

A new study from the IU Public Policy Institute argues that the racial and economic disparities found across the criminal justice system are being exacerbated by one thing in Marion County.

Cash bail.

The explanation is complicated and winding — particularly for people who are unfamiliar with the nebulous connections between arrest, jail and court — but the gist is this: Not only are Black and Latino people more likely to face harsher punishments compared to white people, they also tend to face higher bail amounts while in jail.

The policy paper, published by researchers at the IU Public Policy Institute's Center for Research on Inclusion and Social Policy, cites past research on the topics.

The paper emphasizes research that found average bail amounts are 35% higher for Black men and 19% higher for Latino men than for white men accused of similar crimes. Latino people also more likely to be detained in drug cases, the paper notes, compared to white people.

Put another way: While white people or people with money are able to afford bail prior to their court dates, Black and Latino people are more likely to remain stuck in jail — which can result in them losing their jobs, homes and custody of their children.

Those inequities carry through the system, the paper notes, resulting in disparities in conviction rates, debt tied to court fees and incarceration.

"The bottom line here is that there's not a lot of evidence that pretrial detention actually ensures public safety," said Krystal Gibson, a researcher who authored the study. "And it's also harmful to individuals in the community as a whole as it can lead to higher homelessness rates and poverty rates, and disproportionately impacts Black and Latinx individuals."

As one snapshot, Marion County Jail data obtained by IndyStar shows that nearly 60% of the jail population is Black, while the county's Black population is closer to 29%.

Low-income people also often find themselves stuck in jail while awaiting trial simply because they cannot afford bail, which is the amount of

money defendants are required to put up to ensure they appear in court. (If they don't show up, the court can keep the money.)

One nonprofit organization is trying to change that. The Bail Project, which started operating in Indianapolis in 2018, essentially tries to level the playing field by covering the cost of bail for people who lack the means to pay the cash themselves.

But the organization has found itself under increasing scrutiny by local media and Republican office-holders because the nonprofit played a role in bailing out two people who were later charged with murder and a third person who was later accused of stabbing two Indianapolis police officers.

Republican lawmakers passed House Bill 1300 this year to target The Bail Project. The bill, signed by Gov. Eric Holcomb, prevents charitable bail organizations from bailing out people accused of violent crimes and bans them from receiving taxpayer dollars. The organization fought back this month, filing a lawsuit against the state of Indiana seeking to nullify the law. The suit is pending.

Supporters of the new law, including Republican state lawmakers and the bail bond industry, have said The Bail Project needed to be regulated because, they argued, the organization contributed to Indianapolis' growing homicide problem.

An IndyStar investigation published in March, however, reached a different conclusion. The investigation found The Bail Project tied to just 1% of murder cases filed in Marion County. Commercial bond agents, meanwhile, bailed out more people who were later accused of murder.

The IU policy paper briefly explores the new law, too. While it's not yet known, the new law limiting the use of charitable bail could further exacerbate racial and economic disparities tied to cash bail because low-income people will be forced to rely on the private, for-profit bail bond industry at even higher levels.

"These limitations create a dependency on the private bail bond industry," the paper notes, adding that the private bond companies do not typically offer other services to encourage people to appear in court, such as transportation or court date reminders.

Jeffrey Clayton, executive director of the American Bail Coalition, disputed a portion of the study that essentially suggested that Indiana consider pretrial detention reform efforts that were implemented in New Jersey, where jail populations declined over the past two decades. Clayton said no study has effectively linked those declines with reform.

"This may be termed a new report," Clayton said in a statement, "but in actuality it is a rehash of inaccurate national talking points debunked long ago."

Twyla Carter, national legal and policy director at The Bail Project, said the nonprofit will continue working to help people who are struggling because of cash bail.

"Black communities bear the brunt of these abuses," Carter said in a statement. "It is unconscionable that instead of working to take money out of the system and make it more just, members of the legislature and the governor chose to target one of the only lifelines poor Hoosiers have when their liberty and due process rights are at stake."

The IU Public Policy Institute paper cites The Bail Project's data, noting that the organization pays an average bail amount of \$2,125.

The policy paper notes the bail bond industry does not publicly share data, making it impossible to compare the industry's effectiveness against charitable bail organizations.

The new law might help that, though: The law requires the judicial administration to begin tracking the names of bail agents and their license numbers. It could allow future researchers to analyze who is posting cash or surety bonds.



Responding to the National Crime Wave: New Framework Needed to Combat Recidivism

Jeffrey J. Clayton

MAY 30, 2022 09:00:34 AM

Edited by: [Katherine Gemmingen | U. Pittsburgh School of Law, US](#)

Jeffrey J. Clayton, Executive Director of the American Bail Coalition, discusses why a new framework is needed to combat recidivism in the rise of national crime...

For all the talk there has been of the huge increase in crime across the nation, not nearly enough attention has been put on the single greatest reason for the problem: recidivism. It has been fueled by a mindset in our criminal justice system in which levels of crime have arbitrarily been labeled low-level or high-level. In the process, judicial discretion to deal with defendants has become severely limited based solely on that label.

As a result, offenders have become emboldened to break the law repeatedly, especially as an increasing number face slap-on-the-wrist consequences for their actions.

According to the [US Justice Department](#), “Recidivism is one of the most fundamental concepts in criminal justice. It refers to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.” The department reported that a very small fraction of individuals—about 2 to 5 percent—are responsible for half or more of all crimes. Therefore, stopping a small percentage of recidivists can have a massive impact on the rise in crime.

We need look no further than New York State to see how its policies of defining persons as “low-level” forced judges to ignore the stark reality of recidivism. In a *New York Post* article published in February, Jim Quinn, a former executive district attorney, explained that the average person described as a “low-level defendant,” had a shocking 18 prior strikes against them, broken down to include 10 prior arrests, six prior convictions and two prior bench warrants for failing to appear in court. These individuals, considered poor and unable to afford bail, were released under the state’s bail reform law and had a 43 percent new crime rate while out on bail.

The failure of criminal justice policies across the country has resulted in an attempt by bail reform advocates to create a new narrative. They have espoused the “new” idea that the problem of repeat criminality can be solved by allowing the system greater discretion to request and impose bail, rather than restricting it as has been done in the past.

In Los Angeles County, embattled District Attorney George Gascón, who is currently fighting a recall vote on this very issue, recently reversed his no-bail special directive for certain crimes. Gascón implemented this controversial edict on his very first day on the job. Despite rising crime that was already making headlines, he said last December that he would “not be intimidated by political rhetoric.” It was difficult to accept either the sincerity or wisdom of the action with so many officials publicly in opposition, including Los Angeles Sheriff Alex Villaneuva, who called it “an absolute disaster for the community.” But Gascón’s Chief Deputy, Sharon Woo, insisted that the move to allow greater discretion to request monetary bail was about “protecting public safety,” while ignoring the growing numbers of failures to appear in court as the reason for the new policy.

Another prime example of failed policies that encouraged recidivism can be found in Houston’s Harris County, where numerous misdemeanor bail reforms, that centered on low-risk crimes that supposedly required little attention, resulted in a nearly unprecedented rash of re-offenses. The Houston Police Officers’ Union released a telling report earlier this month (May 2022) based on a simple premise and methodology: pull Harris County’s publicly-available court files and see what the cold, hard facts revealed. What the data showed was startling: 76 percent of misdemeanor defendants skip court. Meanwhile, 72 percent of all misdemeanor charges are dismissed, due to a 170 percent increase in backlogs caused by the fact that no one is showing up for court. In sharp contrast, the dismissal rate was only 26 percent prior to the implementation of these reforms.

In greater Houston, justice delayed is truly justice denied. Unfortunately, law enforcement knows the reality of the situation they face every day and have all but

thrown their hands up in frustration. Despite the fact that the area has one of the highest DWI-related fatality rates in the nation, it is no secret that the best strategy for fighting a DWI charge is to simply not show up for court. The statistics bear this out: in Harris County, there is only a 28 percent chance of being convicted for a crime for which an individual has been arrested.

Similar results can be expected in California, Michigan and Ohio, where bail reform legislation has been proposed. If these policies are approved in more jurisdictions, it would restrict the discretion of judges to impose bail based on what is labeled “low-level” crimes, thus ignoring any criminal past and pretrial failures, no matter how extensive.

In a 2016 study, the National Institute of Justice concluded that two things deterred criminal behavior: 1) increasing the perception that criminals will be swiftly caught; and 2) increasing the probability that they will be punished. To that, I would add increasing the speediness of criminal cases. Research has shown that delayed punishment greatly decreases its effectiveness. The quick resolution of cases may also reduce or completely eliminate the negative impact of extended pretrial detention.

While the presumption of innocence is fundamental to our legal system, it does not exist to excuse the conduct of previously convicted recidivists who are re-victimizing our communities. These individuals must be made to understand that they are subject to arrest and must post bail on any new charges or possibly even remain in jail.

Sadly, there is a seemingly endless list of state lawmakers around the country who would love nothing more than to push through a bill increasing sentences for a long list of crimes. While that might grab the headlines they seek, doing so would actually not deter crime. The only way out of our current mess is to send a strong signal to recidivist criminals that they will be held strictly accountable and then demonstrate that we mean business. What must fundamentally change is our present toothless stance that “low-level” crimes remain so even if they are committed a hundred times. Instead, we must stand firm that any qualifying crime, committed often enough, will now be treated as “high-level.” Defining the specific criteria and what that line is will be one of our prime legislative and legal policy challenges in the years ahead.

As our nation continues to wrestle with its out-of-control crime problem over the next few years, here is a simple test to determine how our state legislatures should proceed: Do their actions increase the perception and reality that repeat criminals will be swiftly caught and prosecuted? And do they increase the probability of recidivists being punished? Forget any political noise you might hear. Anything that does not directly address these issues will not help us right now.

For richer or poorer, recidivist criminals dwell at the center of our criminal justice problems. Rather than helping them maintain the status quo they currently enjoy, if we are ever to get a handle on the problem, we must do everything we can to prevent them from continuing to victimize our communities.

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the US Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the US Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

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This article was prepared for publication by [Katherine Gemmingen](#), JURIST Co-Deputy Executive Editor. Please direct any questions or comments to her at commentary@jurist.org

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Daily Journal

Government

Jun. 30, 2022

Bail reform is 'inconsistently' applied throughout state, critics say

"Humphrey is not being taken as seriously by the courts as one would hope a Supreme Court ruling would be," said Katherine Hubbard, deputy director of litigation with the Civil Rights Corps.

Critics of cash bail say courts around the state have "inconsistently complied" with last year's California Supreme Court decision preventing judges from holding defendants solely for their inability to pay bail.

With COVID-era zero bail policies expiring in more counties -- now including the most populous county in the state -- that inconsistency suddenly matters for a lot more people, said civil rights attorney Katherine Hubbard. But some prosecutors and bail advocates say the high court's ruling was never as sweeping as bail critics claimed.

Hubbard is deputy director of litigation with the Civil Rights Corps. She was part of the team that won *In re: Humphrey*, 2021 DJDAR 2813. The unanimous court found judges must consider a person's ability to pay cash bail and not hold people solely for their inability to come up with the money.

"A lot of courts are just not making the finding that Humphrey requires and are continuing to set unaffordable bail without any serious consideration of an individual's ability to pay," she said. "Humphrey is not being taken as seriously by the courts as one would hope a Supreme Court ruling would be."

The Judicial Council briefly imposed a zero bail schedule around the state for "lower level crimes" in 2020, during the early days of the COVID-19 pandemic. It has since rescinded that policy, but many counties kept some version of it. According to figures provided by the Judicial Council, 13 of California's 58 counties still have some form of COVID-modified bail schedule.

The Los Angeles County Superior Court announced June 14 it will begin enforcing its felony and misdemeanor bail schedules effective June 30. The court had maintained that policy since April 2020. Los Angeles County has more than 10 million people -- more than the combined 9.4 million that live in the 13 counties that still have modified bail policies. This group includes Contra Costa, Sacramento, San Bernardino and Santa Clara counties.

"Once the zero dollar bail schedule goes away in Los Angeles, the biggest county and the biggest jail in the county, it's going to have a big impact on the number of people being detained," Hubbard said. "The fact that judges are not following Humphrey is going to be even more of a problem than it already is."

Jeffrey Clayton, executive director of the American Bail Coalition, said about 31 counties with 80% of the state's population maintained modified bail policies long after

the Judicial Council's order expired.

"I was surprised the zero bail policy was left in place as long as it was," Clayton said. "The Judicial Council rescinded it but a lot of courts kept it around for a lot longer."

He also questioned whether Humphrey was being misapplied.

"It was perceived to be this monumental decision, but this is not what has happened in practice," Clayton said.

California District Attorneys Association CEO Greg Totten said Humphrey didn't overturn the broad discretion courts have in setting bail. This includes determinations of whether someone is a risk to flee or harm others. Totten said his members don't want to hold people on minor charges when they can avoid it.

"I'm not surprised there are concerns with inconsistency, because different courts do different things on bail," Totten said. "Just like evidentiary rulings, just like sentencing, there's going to be variations from court to court."

The Los Angeles County Superior Court's June 14 news release said the emergency bail schedule landed during a separate debate about the future of bail in California. The zero bail policy was meant to relieve overcrowding at the time when no vaccine was available and COVID-19 was spreading in some jails and prisons.

"The EBS was not conceived as a part of California's efforts at zero cash bail reform, the court's news release said. "They are completely different. Zero-dollar bail initiatives seek, as a matter of public policy, to permanently eliminate cash bail as part of bail reform. The Court's EBS did not eliminate cash bail and was intended to be a temporary response to the pandemic-related dangers inherent in pretrial incarceration."

Two members of the board of directors of the Los Angeles County Public Defenders Union Local 148 argued in an op-ed in the Los Angeles Times on Tuesday that the court should keep the policy. Meredith A. Gallen and Garrett R. Miller wrote restarting bail would increase overcrowding in a court that already detains 47% of people facing trial.

Another group of attorneys are seeking class status for detainees who can't afford bail in two cases in Los Angeles County, *Munoz v. Superior Court of Los Angeles County*, 2:22-cv-03436-MWF-SK (C.D. Cal., filed May 20, 2022) and *People of Los Angeles County Who Are Being Penally Confined in Pre-Trial Detention Because of and Dependent Upon Their Inability To Pay Bail v. Villanueva*, 2:22-cv-02538-DMGJEM (C.D. Cal., filed April 15, 2022).

Those cases claim Los Angeles County is holding "about 14,000 to 17,000" in violation of their constitutional rights.

"How come the California Supreme Court hasn't told them to cut it out, in light of the Humphrey decision?" said plaintiffs' attorney Stephen Yagman, a partner with Yagman+Reichmann in Venice Beach. "We are presently deciding whether to file a third action against the California Supreme Court."

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SINCLAIR

BROADCAST GROUP

Debate over cashless bail intensifies amid nationwide crime wave

by JILLIAN SMITH | The National Desk
Wednesday, July 27th 2022



Debate over cashless bail intensifies amid nationwide crime wave (WSTM)

WASHINGTON (TND) — Over the last few years, some cities have made some changes to their criminal justice laws, including reforming their bail systems to make them more fair to those with lower incomes but amid [a recent crime wave](#), including crimes committed by repeat offenders, some argue the system has gone too far and makes communities less safe.



Debate over cashless bail intensifies amid nationwide crime wave (TND){ }

Just weeks ago in Seattle, [56-year-old Anthony Gonzalez](#) was shot in the face with a shotgun. The suspect had nine felony convictions and 25 arrests but was bailed out by a local non-profit.

Friends and family of the victim say they still are grappling with a profound feeling of loss since he was [slain at a Seattle homeless encampment](#).

When someone has a repeat offense on their record I feel like that should be a red flag and at that point, people shouldn't get bail but they do," Gonzalez's friend Kayla Awford said.

It's a trend [New York City Mayor Eric Adams](#) worries is growing in his city as well.

“As soon as we catch them, the system releases them and they repeat the action,” Adams said.

He's calling on his state legislature to call an emergency session to re-examine bail laws for violent offenders, calling New York a laughingstock for its lax laws.

“How do we keep our city safe when the other parts of the criminal justice system, they have abandoned our public safety apparatus?” said Adams.

The debate over bail reform is a complicated one since two people who committed the same crime would be treated very differently based on their income level in what reformers call [a wealth-based system](#), where those charged simply cannot afford to pay to get out.

You may sit in a county jail for years months to years and you end up taking a plea deal in some instances, admitting to a crime that you didn't commit," said Garien Gatewood, director of the Illinois Justice Project.

Gatewood's Illinois Justice Project helped pass the [Pretrial Fairness Act](#), which goes into effect next year. He said it will help level the playing field but others say income level should be just one ingredient in the recipe to determine whether someone charged with a crime should get a cash bail.

Some say there should also be other questions about family and community ties, employment and most importantly, prior criminal history and prior record of appearing in court.

The [American Bail Coalition](#) argues those are factors that should be determined by judges.

“Overriding judges, particularly when it comes to violent criminals, has been a problem. 5% of defendants commit 60% of the crimes in this country. The judges know who they are and we need to let them do their job,” said Jeff Clayton, executive director of the American Bail Coalition.

It’s a job that’s growing more complicated in many cities where violent crime is on the rise.

JUSTICE

The problem of cash bail in CT: ‘They just cannot claw their way out’



by Kelan Lyons
July 31, 2022



Jean Conquistador, left, speaks at a trial at the New Britain courthouse, next to his deputy assistant public defender, Joshua Perldeiner. Conquistador was incarcerated for about two months earlier this year because he couldn't afford to pay the bond set at \$45,000.

YEHYUN KIM / CTMIRROR.ORG

The burden of bail: A three-part series

Over the next three weeks, the CT Mirror will explore the effects and challenges of Connecticut's cash bail system.

This week: One man's uphill struggle to stay out of prison illustrates the pitfalls of the system

Next week: Why New Jersey got rid of most cash bail

In two weeks: Financing freedom through GoFundMe

Jean Conquistador didn't expect to have to post bail.

He'd been accused of violating his probation by showing up at his girlfriend's house, so he drove himself to the New Britain Police Department on the morning of Jan. 13, 2022, after learning that there was a warrant out for his arrest. Figuring he'd be back home in a few hours, he didn't ask anyone to watch his 11-month-old pit bull, Papo.

But at his virtual arraignment later that morning, Judge Laura F. Baldini set his bond at \$45,000, partly because of the seriousness of the charge for which he'd been put on probation. If Conquistador posted bond, the judge said, he'd be put on intensive pretrial supervision to ensure he complied with the terms of his release.

But first, he'd have to come up with \$45,000. He could post the full amount himself, which he'd get back once his case was resolved so long as he showed up for court. Or he could pay a bail bondsman thousands of dollars to assume the risk of paying Conquistador's bond — a fee that would not be returned to him.

Conquistador told the judge that neither was an option.

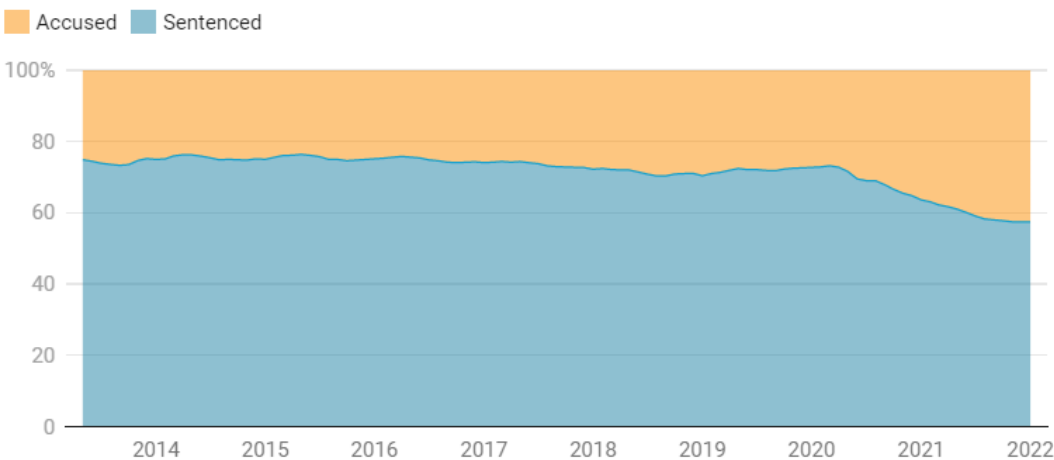
"I'm not going to bond out, so I'll be incarcerated," Conquistador said, asking someone — anyone — to tell his family he was going to jail and ask them to take care of Papo and get his pickup truck, which he'd parked on Pearl Street, so it wouldn't get towed.

"I do not have the money to bond out," he said.

There were almost 450 people in Connecticut correctional facilities on [Jan. 1](#) who, like Conquistador, were held on bonds between \$20,000 and \$50,000 [while they awaited trial](#). If they posted bail, they'd be able to fight their case from outside the confines of a jail cell. If not, they'd stay locked up until the case was resolved — when charges are dropped, when they plead guilty or when a jury decides their fate.

Unsentenced people account for a larger share of the incarcerated population since COVID

As of the beginning of 2022, the unsentenced population in Connecticut's prisons and jails accounted for more than 42% of the total population, compared to about 27% in January 2020.



Source: Connecticut Department of Correction • [Get the data](#) • Created with [Datawrapper](#)

Connecticut has made major strides in reducing the number of people in its prisons and jails, thanks to criminal justice reforms and falling crime rates.

For perspective: There were 19,894 people in prisons and jails on Feb. 1, 2008; On May 20, 2022, there were 9,880.

But a greater proportion of those in lock-up aren't there serving sentences. They're awaiting trial in prison, because they couldn't afford bail.

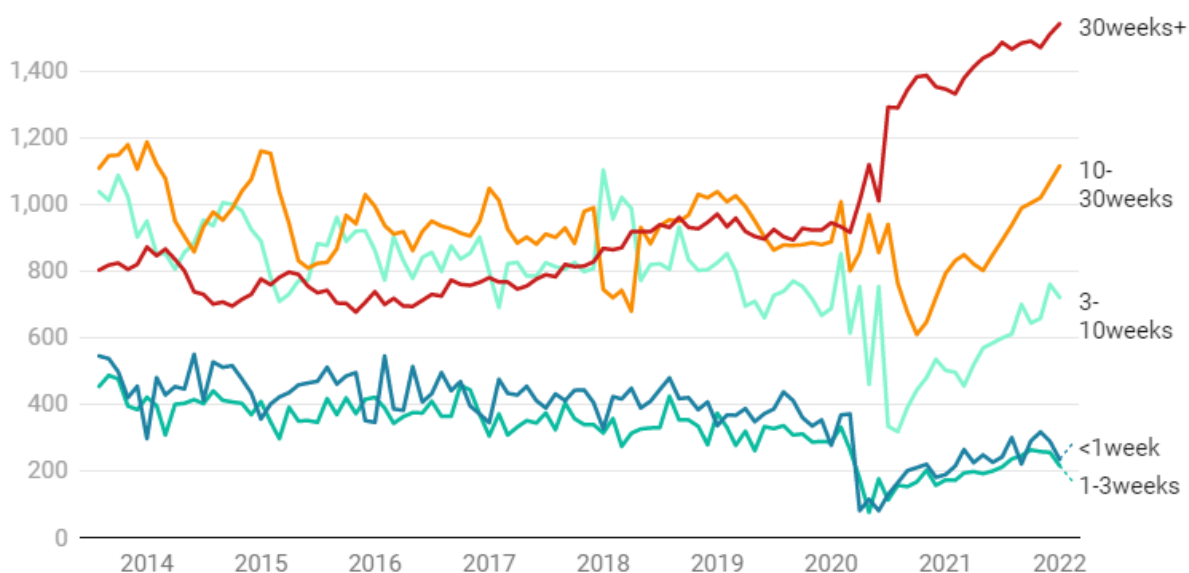
According to a CT Mirror analysis of monthly reports produced by the Department of Correction, the accused made up about a quarter of those behind bars in June 2013. In January 2022, they made up 42% of those locked up.

Staying in jail longer before trial

Those locked up pretrial are also spending more time in jail, according to another analysis by the CT Mirror, especially since the start of the pandemic.

How long have people been stuck in pretrial detention in CT?

The number of people who have been held without a trial for more than 30 weeks has risen more than any other group since the beginning of the COVID pandemic.



Source: Connecticut Department of Correction • [Get the data](#) • Created with [Datawrapper](#)

Much of the change in the incarcerated population over the past few years is due to the pandemic, according to experts. The pretrial population actually decreased by 21% between 2010 and 2019, said Marc Pelka, the undersecretary for the Criminal Justice Policy and Planning Division of the Office of Policy and Management.

“There is a substantial number of people who never see their way to DOC [Department of Correction] following an arrest,” Pelka said, explaining that not everyone who gets arrested remains locked up

pretrial on a bond. “At every kind of stage in the process, there's a review conducted to determine eligibility for diversion, discharge or some resolution.”

But recent national research shows the increase in pretrial detention began well before COVID-19.

Between 1970 and 2015, there was a 433% increase nationally in the number of individuals who have been detained while awaiting trial, according to a [report](#) released earlier this year by the U.S. Commission on Civil Rights. The report also notes that more than 60% of defendants are jailed pretrial because they couldn't afford bail.

“Presumption of innocence is the bedrock of our criminal justice system, with liberty the rule and pre-trial detention intended to be a ‘carefully limited exception,’” said Norma V. Cantú, chair of the U.S. Commission on Civil Rights. “Under the current bail system, it has become the norm.”

Something that looks like a low bond on paper is not a low bond for somebody who does not have access to a lot of resources.

JOSHUA PERLDEINER, DEPUTY ASSISTANT PUBLIC DEFENDER

[Research](#) suggests being [jailed pretrial](#) makes people more likely to be convicted and receive harsher sentences than those who remain free until their case is resolved in court.

Imagine being held in jail for six months on a bond you can't afford, said Joshua Perldeiner, a deputy assistant public defender in New Britain and Conquistador's attorney. As those months tick by, you lose your apartment, your housing vouchers, your job, maybe even your family.

Your life has been turned upside down, Perldeiner said. You've lost almost everything, but what you have gained is six months of jail credit, time that could be applied to your sentence. All you have to do is take a deal the prosecutors are offering you, [collateral consequences](#) of that conviction be damned.

“So when the state turns around and says, ‘Hey, you want to resolve this with a guilty plea, [you've] already done six months ... You want to enter a plea for a year?’ That sounds very attractive,” Perldeiner said. “Cash bail uniformly punishes our clients.”



Jean Conquistador, left, talks to deputy assistant public defender Joshua Perldeiner before the trial in April. Conquistador said his mother and two aunts pooled together their social security and disability checks to afford his bond because they knew he was trying to get his life on track, getting his commercial driver's license and going to church.

YEHYUN KIM / CTMIRROR.ORG

In [Connecticut](#), bail serves two purposes: to make sure people show up for court and to ensure good behavior if they are released while their case is pending.

The actual amount of a bond can be misleading because defendants don't need to post the full amount to get out of jail. They can post a surety bond through a bail bondsman, who, for a fee, will pay the bond if a defendant fails to show up for future court appearances.

“Our role hasn't changed for 20 years that I've been in the business,” said Andrew Marocchini, the founder and general manager of BailCo Bail Bonds. “It is our job to make sure that that defendant shows up to court. And if they don't, then we either have to pay the state to make the state whole, or produce the defendant, go out and find him or her and bring him back.”

Connecticut enshrined the right to bail in the state [constitution](#), even protecting criminal defendants from “excessive bail.” But a reasonable bond amount for someone with money could be unreasonable for someone who is poor.

“Something that looks like a low bond on paper is not a low bond for somebody who does not have access to a lot of resources,” Perldeiner said. “The smaller your network of resources, the fewer people you can draw on, the more disproportionately these bonds affect your entire life.”

Poor people are, of course, disadvantaged in the criminal justice system, and the way the bail system sometimes operates is an example of that.

SENATE PRESIDENT PRO TEM MARTIN M. LOONEY

Some lawmakers are interested in reforming — or reimagining — the system. Senate President Pro Tem Martin M. Looney, D-New Haven, asked the Sentencing Commission in 2019 to [explore alternatives to Connecticut's cash bail system](#).

“For a long time, I have had grave concerns about our bail system and the fact that very many low-income people are in effect punished by the bail system as it is,” said Looney.

Looney said he would be willing to propose legislation to move Connecticut away from a money bail system.

Perhaps cash bail might be necessary when a defendant has a history of failing to appear for court hearings, Looney said, but most of the time, he believes a person's ability to post bond should be based on something other than their access to financial resources.

“Poor people are, of course, disadvantaged in the criminal justice system, and the way the bail system sometimes operates is an example of that,” said Looney.

High bond amounts and long stays in pretrial detention disproportionately affect people of color. A U.S. Commission on Civil Rights [report](#) found that Black and Hispanic defendants were more likely to be detained on higher bond amounts and more likely to be incarcerated pretrial.

“The reality is the people that suffer from the bail system are the Black and brown communities, because they don't have this luxury of cash laying around where they can bond their loved ones out of jail,” said Jewu Richardson, one of the directors of the CT Bail Fund. “If you're giving people bonds they can't afford to post, I mean, what are you really doing? This system is not working, and people are suffering.”

Conquistador is Hispanic. In Perldeiner's experience, clients who are racial or ethnic minorities typically get assigned higher bonds than those who are white. The reasoning is complicated and often obscured in court proceedings, but Perldeiner said minorities tend to have more

contact than whites with the criminal legal system, which influences how they're perceived in court and can impact their bond amount.

“His record is worse, because he's Hispanic, he was under more supervision than he would have been if he was white, because he'd been arrested more times,” Perldeiner said.

“So all of these things add up, these little, like, tiny kicks as a result of being Hispanic, add up to a thing where you can't even point to it at the time of arraignment to say, 'Oh, well, it was the judge who was racist,' because all of these things are kind of mystified by the system, so each of the little strikes against him that happened before he got into the courtroom, by the time he's in the courtroom, they're all kind of whitewashed.”



Jean Conquistador wore a uniform at the trial to head to his job right afterwards. "I'm doing what I'm supposed to be doing," he said. "I'm working toward my dreams, to become a lawyer."

YEHYUN KIM / CTMIRROR.ORG

An unexpected jailing

Conquistador appeared in court on Jan. 13 via a video feed from lockup. He interrupted the judge to tell her he hadn't gotten along with the bail commissioner in his interview that morning.

“He definitely called me a racist,” said the bail commissioner, who isn’t identified in the court transcripts.

The bail commissioner recounted Conquistador's criminal history. His rap sheet included multiple violations of probation. He had a pending case for breach of peace and violating a protective order. He’d posted a \$15,000 bond through a bondsman to get out of police lockup for those charges, but he was tapped out; he couldn't afford to bond out of jail again. He also had previous convictions for threatening, falsely calling 911, and violating probation.

Despite his past, the bail commissioner recommended that the judge release Conquistador on a promise to appear.

Perldeiner sided with the bail commissioner. Conquistador’s girlfriend had obtained a protective order against him, Perldeiner said, but it had been amended in 2018. She’d told the public defender’s office she’d be willing to sign a sworn statement that Conquistador hadn’t bothered her the night he showed up at her house; it had been her mother who had called the cops.

Perldeiner ran through the details of Conquistador’s life, condensing all he had going for him into a few sentences: Self-employed. Enrolled to complete training for a commercial driver’s license. Doing well with his mental health treatment.

The state’s attorney, Danielle Koch, disagreed. She asked for a \$50,000 bond at Conquistador's arraignment because Conquistador had violated his probation by getting rearrested for a domestic violence charge. And, Koch said, Conquistador was under investigation by the Berlin Police Department for a road rage complaint.

The judge sided with the prosecutor.

“Certainly, given this history, the fact that he’s been afforded the opportunity to avail himself of the rehabilitative aspects of probation before, has numerous violations of probation, he’s got a new criminal matter — the allegation in the VOP warrant also indicates that he allegedly failed to report to probation, leads this court to set a bond in the amount of \$45,000 cash or professional surety,” Judge Baldini said.

"Your Honor, if I may?" Conquistador asked.

Baldini kept talking, outlining where Conquistador would be allowed to go without having to tell his probation officer, should he post bond. Baldini tried to set a date for the next court hearing when Conquistador interrupted her.

"Your — your — your Honor, if I may?" Conquistador said.

"What is it—" Baldini asked.

"Please," Conquistador interrupted.

"— That you would like to say, sir?" Baldini finished her sentence.

Conquistador mentioned his puppy and pickup truck. Perldeiner said he was going to call Conquistador's mother to take care of it.

Baldini asked Conquistador and Perldeiner to stop talking over one another.

"You've indicated that you have a pickup truck that's outside?" Baldini said. "Perhaps you can speak with your attorney about facilitating whatever needs to get done with regards to that."

Instead of going home later that day, like he expected, he was transported to Hartford Correctional Center.

Posting bond — or not

Marocchini said bonds were used more often in the late 1990s, when he first joined the bail bondsman industry, even for low-level criminal charges that are now considered innocuous.

"Over time what was realized for relatively low-level charges for offenders without a history, the bonds weren't really necessary. It didn't really change the outcome of whether they showed up to court," Marocchini said. "From a businessman standpoint, I would rather have more bonds than not, but there's certain things that are good for society and certain things that aren't, and it's kind of hard to stand by those things that aren't proven necessary."

Societal change isn't the only reason there are fewer bonds these days.

Lawmakers passed reforms in 2017 that barred judges from setting money bail in most misdemeanor cases, the major exception being for crimes involving family violence. Two years later, Superior Court judges changed court rules to allow defendants to post 10% of the cash bail in misdemeanor cases where the bond is \$20,000 or less, funds they would get back once their case is resolved. If they paid a bondsman, they wouldn't get the money back.

I think the end goal is so these people don't reoffend. We want to rehabilitate them and make sure that they get the services that they need.

JOAN NEWTON, INTAKE REFERRAL ASSESSMENT SPECIALIST

As Pelka said, those charged with crimes in Connecticut have multiple chances to get out of jail without having to post bail, plead guilty or hope their case gets dropped.

When suspects are arrested, police can either give them a bond or a promise to appear in court. Those who stay locked up are visited by bail staff with the Court Support Services Division, who can modify the bond after interviewing defendants. Those still jailed and held on a bond are then arraigned in a court hearing, where prosecutors, public defenders and bond support staff make a recommendation to a judge about what they think the bond amount should be. The judge uses all that information, often in a hearing lasting only a few minutes, to decide how high or low to set a person's bond.

At any stage in this process, individuals can bond themselves out of jail if they have the money or enlist the services of a bond agent.

"A lot of times, I will say, 'Listen, I'm gonna put a bond on you. What can you make?'" said Joan Newton, an intake referral assessment specialist who works at the New Britain Courthouse. "If they have zero means to post anything, I'm going to try to get them out."

Newton talks to defendants in lockup, using a six-page assessment tool that assigns a defendant a score and an appropriate bond amount that corresponds with the severity of their charge.

Most of the people Newton sees have mental health or substance use issues.

"I am one of the first people that they see other than police," Newton said, explaining the role she plays in connecting people in the justice system with support systems and programs to help them recover. "I think the end goal is so these people don't reoffend. We want to rehabilitate them and make sure that they get the services that they need."

IAR specialists, also known as bail commissioners, like Newton are only one voice in the courtroom during arraignments. Defense lawyers and state's attorneys also make arguments in court, usually for higher or lower bond amounts.

Saving money by serving time

Money is a proxy for risk in Connecticut's cash bail system. The higher a person's bond amount, the greater the court considers them either a risk to public safety or likely to skip court appearances.

Conquistador's past aligns with a point made by many in the bail bonds industry: that those with criminal cases who get locked up on a bond generally have spent time incarcerated before.

"The defendants by and large in Connecticut jails have lengthy records, the ones who stay in jail. So you know, the concept that you're just a first timer — sure, it happens," said Jeff Clayton, executive director of the American Bail Coalition. "But generally, it doesn't happen very often. Most of the people that get stuck in there are there for reasons far beyond 'I can't afford it.'"

But not everyone who is incarcerated on a bond wants to post it. Edwin Ortiz, a New Britain resident, said he was in jail on a \$150,000 bond from Nov. 2019 to Jan. 2021, for misdemeanor sexual assault and breach of peace charges.

"I couldn't post that, no way," said Ortiz.

When I know I have to do time, why bond out, get sentenced and have to come back?

EDWIN ORTIZ

Ortiz priced some bail bondsmen while he was in jail, trying to figure out how much it would cost to get himself out. But he didn't want to dip into savings and knew his family was strapped for cash. So he sat behind bars as COVID-19 worked its way through the prison system.

After more than a year, he was released on a promise to appear and given an ankle monitor. Ortiz acknowledges that getting released on a promise to appear is evidence the system works, that he wasn't held indefinitely on a bail he couldn't afford and forced to plead out — even though he did sit in jail for more than a year on bond.

"In the whole midst of that, I could have caught COVID and passed away," he said.

Ortiz said he has been through the court system before. He has posted bond for cases in the past, but sometimes, when he knows he's going to have to do prison time anyway, it doesn't seem worth it to spend the money to go home if he's just going to have to come back.

“When I know I have to do time, why bond out, get sentenced and have to come back?” he asked.

When Ortiz was in jail for those 14 months, he’d see his peers borrow money to bond out, only to come back a few months later. He’d ask what happened, and they’d tell him they just got sentenced.

“Now you have to start from scratch when all that time would have counted,” said Ortiz.

Another chance

It took almost two months, but Conquistador got out of jail on March 3. His mother and two aunts pooled together money from their disability checks, along with help from a friend, to pay a bondsman to get him released.

He’d spent two months in jail on two bonds he couldn’t afford — one in New Britain, and another in Meriden. By the time he was released, he’d lost the home he’d been renting. His landlord kicked him out while Conquistador was in jail, throwing all his belongings outside by a dumpster. Someone took Conquistador’s chainsaw and pressure washer, expensive tools he needed for work.

He owed money for car insurance payments that had accrued while he was in prison, and he owed money to a bondsman, he said, for getting him out of jail in November 2021.

Conquistador arrived for a hearing at the New Britain courthouse on April 29. He was dressed in his work clothes — army pants and a reflective jacket — for his job as a residential contractor at his own business, [Conquistador General Contracting, LLC](#). He’d told members of his church he might not make it to work later that day because he might be going back to jail.

I was basically pressured into pleading guilty because I couldn’t afford to bond out.

JEAN CONQUISTADOR

To stay out of jail and comply with the terms of his supervision, Conquistador had been required to ask his probation officer for permission any time he wanted to go somewhere. That level of scrutiny proved difficult for Conquistador, Perldeiner said. The probation officer told the court that Conquistador should be put back in jail and given a higher bond.

Conquistador had been trying to get his life back together since getting out of jail. He'd been passing drug tests, going to school and church and getting mental health treatment.

"I'm doing what I'm supposed to be doing," he said before the hearing.

Conquistador lingered outside the courtroom before Judge Maureen M. Keegan called his name.

"I'm a little bit nervous," he said, because if he were given a higher bond, he'd be stuck in jail again. "I wouldn't be able to pay it this time."

All told, Conquistador said, he'd done seven years in prison, mistakes stretching back to his teenage years. Now 34, Conquistador is trying to stay out of the system. He was first arrested at age 14, doing time in juvenile detention centers and prisons across Connecticut.

"My lifestyle was selling drugs, using drugs, stealing cars, stealing car parts," he said. "I was careless in doing whatever I wanted to do."

Then, during a two-year sentence around 2015, Conquistador decided he wanted to change. He wrote letters to community colleges from his prison cell, asking them for educational pamphlets. He has since earned 21 college credits, working toward his dream of becoming a lawyer.

Conquistador had asked Keegan for another chance. He apologized, explaining that he takes medications to treat bipolar condition and sometimes reacts impulsively. He told her he got his commercial learners' permit that past week, that he's been in and out of prison for a while, but he's trying to change.

"I'm still the same person, but I've come a long way," he said.

Keegan wound up giving Conquistador one more chance to show he could comply with the terms of his supervision.

"You've got family members who put up a lot of assets so you could be out," Keegan said. "Why would you play with that?"

Conquistador thought about all the times he got arrested growing up when he was hanging out with the wrong crowd. His family had never bailed him out of jail before — until last March.

"They dug into their piggy banks to bond me out," he said later. "They knew I needed help."

State records show that, despite his change of heart in 2015, Conquistador still wound up in jail again after he decided to leave his prior life behind. He did a monthlong stint in jail at the end of 2017, then went back for eight days in March 2018. He was readmitted on a probation violation on June 1, 2018, staying in until he was sentenced to time served in August 2019. He was never released, though, because he picked up a new charge in prison for threatening a correction officer.

“I was basically pressured into pleading guilty because I couldn’t afford to bond out,” said Conquistador.

Conquistador was released on Feb. 10, 2020. He stayed out of jail for almost two years after that — his longest stretch since 2015 — until he was admitted on Jan. 13, 2022, when he turned himself in and didn’t expect to have to post bail.

Perldeiner sees situations like Conquistador’s all the time, people resolving to change but still winding up incarcerated, stuck in a cycle of arrest and release, imprisoned on low-level charges for violating the terms of their probation.

“They just cannot claw their way out of the system,” he said. “Once the court has its hooks in you, it has you for life.”

Conquistador put on his aviator sunglasses as he left the New Britain courthouse on April 29. It was a sunny day, the kind where there isn’t a cloud in the sky.

Conquistador talked about his plans for the future and his struggles for a few minutes before heading off to work.

The sun shimmered off his reflective jacket as he walked away.

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JUSTICE

New Jersey mostly got rid of cash bail. Why hasn't Connecticut?



by Kelan Lyons
August 7, 2022



Hartford Correctional Center. Attempts to end the cash bail system in Connecticut, which some say is overly burdensome on the poor, have not been successful. YEHYUN KIM / CTMIRROR.ORG

The burden of bail: A three-part series

The CT Mirror is exploring the effects and challenges of Connecticut's cash bail system.

Last week: [One man's uphill struggle to stay out of prison illustrates the pitfalls of the system](#)

This week: Why New Jersey got rid of most cash bail

Next week: Financing freedom through GoFundMe

Shortly before [appointing](#) Patrick Griffin to be Connecticut's chief state's attorney, Criminal Justice Commission Chair and Supreme Court Justice Andrew McDonald brought up a systemic dilemma involving the state's money bail system.

McDonald pointed to two recent cases to illustrate the disconnect between the public perceptions of how bond recommendations are made and how they are actually determined.

The first involved a 15-year old Latino boy who was jailed on a \$150,000 bond in Stamford for allegedly having an inappropriate sexual relationship with an 11-year-old. The other featured a white attorney in Litchfield County charged with first-degree manslaughter with a firearm, whose bond was set at \$50,000.

Cases like these, McDonald suggested, feed into the distrust that members of communities of color have of the criminal justice system.



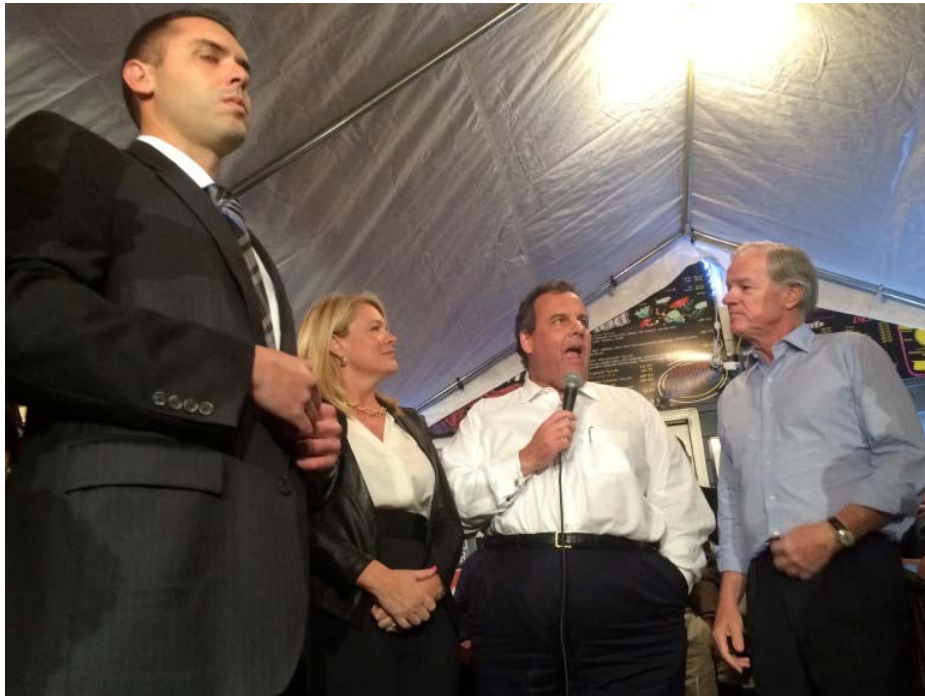
Andrew McDonald

“There’s a raging debate across the country whether cash bail should even be used, and some states have jettisoned it all together,” McDonald said. “And, you know, in a perfect world, it can work well. In an imperfect world, where we all dwell, it can have devastating consequences.”

In Connecticut, those devastating consequences have, in some cases, meant staying in jail for years, awaiting a jury to find someone innocent because they can’t afford to post bail.

One of the states that has scrapped cash bail is New Jersey. The legislature, with the backing of then-Republican Gov. Chris Christie, passed a bill in 2014 that largely eliminated the state’s money bail system. The result: thousands fewer people are held in jail who otherwise might not have been able to purchase their freedom.

“We had a provision of our constitution that required bail in all cases other than capital cases, and we didn’t have the death penalty, which meant you had bail in every case,” said Alexander Shalom, the senior supervising attorney and director of Supreme Court advocacy for the ACLU of New Jersey. “But it was a totally ephemeral because courts did not interpret it to mean that you had a right to a bail that you could afford. It was just that you had a right to bail.”



Chris Christie campaigning in Connecticut in 2014. CT MIRROR

Attorneys say the situation is similar in Connecticut, which also allows for a [constitutional](#) right to bail except in capital cases.

“That’s the Connecticut status quo,” said Alex Taubes, a civil rights attorney who [appealed an emergency bond reduction motion all the way to the state Supreme Court](#) in 2020. “A lot of times, bails are set at levels where you might as well add a zero or two zeroes or three zeroes to it, because it’s just completely unrealistic, and it’s just a de-facto detention order. It’s indistinguishable from no bail at all.”

New Jersey voters approved a constitutional amendment in 2014, largely ending cash bail and transitioning the state to a risk-based pretrial system. Three years later, Connecticut legislators compromised with the powerful commercial bail industry and preserved elements of the cash bail system.

If I had the power to do one thing to improve the criminal justice system, I would eliminate money bail.

MICHAEL LAWLOR, FORMER UNDERSECRETARY FOR CRIMINAL JUSTICE POLICY AND PLANNING

Connecticut has been touted as a leader in criminal justice reform, becoming the first state in the U.S. to cut its incarcerated population [in half](#) since its peak in 2008. But unlike in [Illinois](#), [New Mexico](#), [Washington, D.C.](#), [Alaska](#) and [California](#), Connecticut has not eliminated its cash bail system — and key members of the criminal justice community are not in favor of uprooting it.

As the point person on criminal justice policy for former Gov. Dannel P. Malloy, Michael Lawlor was among those who led the charge to end money bail in 2017.

Lawlor, a former legislator who was chair of the Judiciary Committee from 1995 to 2011, said the for-profit cash bail system — which, besides the Philippines, is [unique to the U.S.](#) — pressures people to plead guilty to get out of jail. Often, Lawlor said, they agree to a sentence of probation and, ultimately, [get trapped in the criminal justice system](#).

“The No. 1 crime for which people are incarcerated is violation of probation,” said Lawlor, now an associate professor of criminal justice at the University of New Haven. “If I had the power to do one thing to improve the criminal justice system, I would eliminate money bail. That is one thing that is almost unique about the United States, and where Connecticut is falling a little bit behind the curve of reforms that you’re seeing elsewhere in the country.”



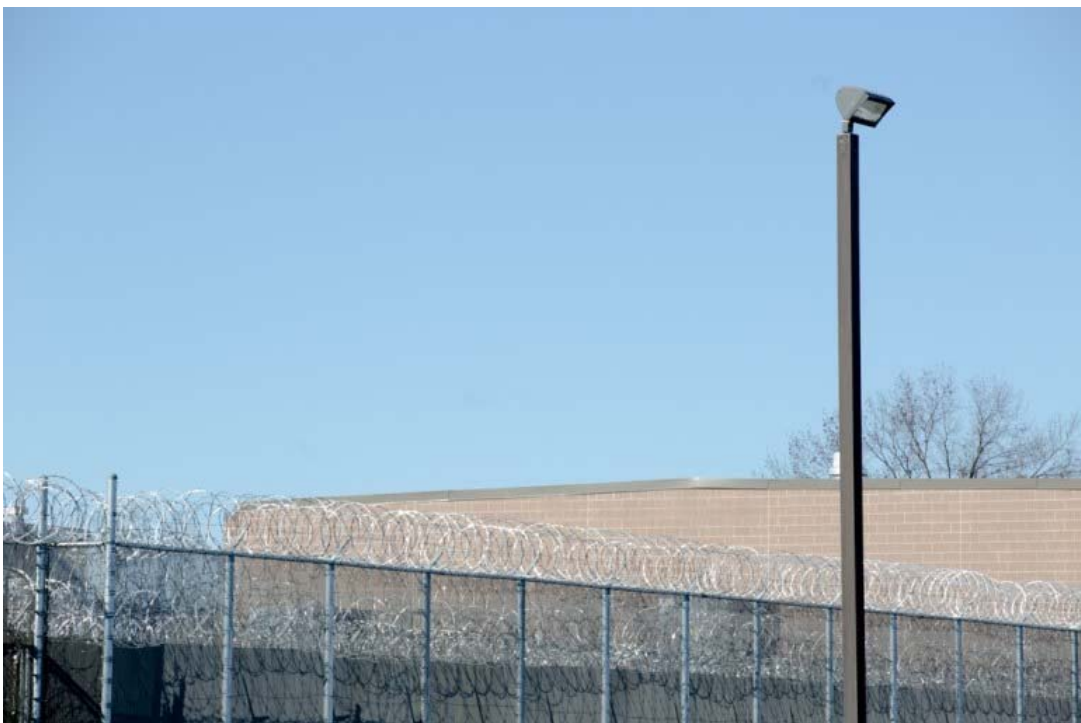
Jay Malcynsky, left, a lobbyist for the bail industry, and Michael P. Lawlor, an adviser to the governor, reviewing bail language in 2017. CTMIRROR.ORG

Not for lack of trying. The Connecticut Sentencing Commission is finishing a report detailing alternatives to the state’s cash bail system. Despite broad agreement that the money bail system can keep poor people locked up who otherwise would be able to go home if they had the money to bond out, members aren’t going to give any recommendations that could lead to the end of cash bail in Connecticut.

“We couldn’t reach an agreement on the proposal,” said Alex Tsarkov, the commission’s executive director.

One of the issues is that there are criticisms of the systems in every state that has abolished money bail, Tsarkov said; maybe the list of crimes for which someone can be detained pretrial is too wide-ranging, or the legal bar to keep people detained pretrial isn’t high enough.

“There is not yet a perfect model out there for Connecticut,” Tsarkov said. “If we had a great model, I think it would be easy to argue in favor of it.”



Hartford Correctional Center YEHYUN KIM / CTMIRROR.ORG

A new system, familiar disparities

In March 2013, the [Drug Policy Alliance](#), a nonprofit that promotes alternatives to the war on drugs, published a bombshell [report](#) about New Jersey's jails. They found that 1,547 people — 12% of the entire jail population — were locked up solely because they couldn't afford to post a bond of \$2,500 or less. About 800 of those people, none of whom had been convicted of their crimes, couldn't scrape together \$500.

"It kind of just put numbers to a flawed system that many of us were already aware of but hadn't really thought through the way that study emphasized," said Joseph Krakora, New Jersey's public defender.

Our clients aren't any more likely to come back to court because grandma put up a thousand bucks than if they were just released and told to report to court by the judge.

JOSEPH KRAKORA, NEW JERSEY'S PUBLIC DEFENDER

After the report came out, Krakora wrote a letter to the state's chief justice, asking him to set up a committee to review the cash bail system.

The Chief Justice created a joint committee of advocates, defense attorneys and prosecutors. [A year later](#), their recommendation was unanimous: move away from cash bail and instead move toward a risk-based model, where people are held pretrial based on the likelihood their release poses a danger to the community.

Krakora said the old system, where a person's likelihood of getting out of jail was tied to how much money they had, did not make a person any more likely to show up to court, supposedly its foundational premise.

"Our clients aren't any more likely to come back to court because grandma put up a thousand bucks than if they were just released and told to report to court by the judge," said Krakora.

The cash bail system is premised on the risk of flight, said Krakora. The idea, he explained, is that if you have to pay money to get out of jail, and getting that money back is dependent on you coming back to court, then you're more likely to show up for your hearings.

So, Krakora said, the cash bail system should only be based on a person's risk of fleeing.

"But of course, that's where the fiction lies, right?" Krakora said. "Because the judge is obviously going to set a higher bail if he or she is concerned that this person is likely to go out and shoot people or rob people or rape people if you let them out before trial. It has nothing to do with whether he's going to come to court."

After the joint task force's recommendations, legislators got to work. The Democratic legislature had the support of Republican Gov. Christie, whom Shalom said wanted a [preventative detention model](#), essentially locking people up pretrial to keep them from committing crimes or avoiding prosecution.

"His idea was he wanted to be able to say we can now lock up the kingpins, the murderers, the whatever," said Shalom.

Christie was so supportive of doing away with money bail, Shalom said, that he called legislators in for a joint special session when the bill based on the task force's recommendations faltered.

Having the governor's support was invaluable, said Shalom. There was concern that doing away with money bail would threaten public safety, or would actually worsen racial disparities of the incarcerated population.

"There was enough skepticism among some Democrats that it needed to be bipartisan," he said. "And the governor has a lot of sway over the minority party that he is affiliated with."

That bipartisanship insulated both parties from political pushback when — not if, said Shalom — someone inevitably was let out under the preventive detention model and committed a crime that made headlines.

"When the first bad case happened, people weren't going to say, 'See? Bail reform,'" Shalom said. "Instead, what people said is, 'This is a tragedy,' or 'this was a f-up,' or both. But, remember, this also happened under the money bail system."

It would take three years after voters approved the constitutional amendment for the cash bail system to end.

How it works

The system that replaced money bail in 2017 created [a new pretrial system](#). Shalom explained it as follows: cops in New Jersey can now either give someone a summons — a ticket telling you when to go to court — or serve you a complaint warrant. If you get the warrant, you're taken to the police station and receive a preliminary risk assessment. You are locked up for 24 to 48 hours before appearing in front of a judge for a release hearing, where the judge assesses if you can be released on your own recognizance and on what conditions.

Prosecutors can seek preventative detention if a judge decides to release someone they think is dangerous. If prosecutors try to keep someone locked up pretrial, they could be held for up to five more days before there's a detention hearing, at which they are represented by a lawyer and have a right to discovery — meaning prosecutors have to share evidence with the defendant's attorney — and they have the presumption of release unless they are charged with murder or a crime that carries life imprisonment.

Shalom said prosecutors are successful in arguing for preventative detention about half the time that they try.

'Intellectual honesty'

Before the shift, Krakora said, judges were using money bail as a means of detaining a person they didn't want to be let out.

But under New Jersey's new system, lawyers in court hearings are arguing over whether a person poses a risk to the community, what their prior record is, when was the last time they were charged with a crime.

"There's an intellectual honesty that exists in a risk-based system," Krakora said. "We're not doing this fiction of barely talking about how much money it would take to assure his appearance to court."

There's just a huge amount of resources that the bail bonds industry will pour into any push to change or eliminate our cash bail system.

DAVID MCGUIRE, EXECUTIVE DIRECTOR OF THE ACLU OF CONNECTICUT

Money bail still exists in New Jersey, but it's much rarer than it used to be. Shalom said judges can only set cash bail if there's a risk of the defendant not showing up for court. And the prosecutor isn't allowed to seek a cash bail unless they make the finding first that a defendant can afford it.

Shalom said the list of crimes for which people can be held pretrial is "too large." Every felony is detainable, as are all domestic violence cases, including misdemeanors.

"That doesn't mean they will be detained, but they are detainable," he said.

The tradeoff of making that many crimes detainable offenses was the political price for abolishing cash bail, said Shalom. Advocates pushing for reform decided it was worth a preventative detention model if it meant thousands of people would be let out of jail who otherwise couldn't afford to go home.

Krakora said the effects have been significant. There are 40% fewer people, on average, in pretrial detention since the law went into effect. Some counties are closing their jails.

Just 14 people were held on bail of \$2,500 or less as of 2020, compared to more than 1,500 in 2012.

But racial disparities are virtually the same. To Shalom, the reasoning is clear: "We haven't done anything to address it."

True change would require reforming other elements of the justice system, including policing, prosecution and disparities in sentencing.

"You have to be proactive to address racial disparities, and just hoping that they'll go away when you get rid of one element of unfairness is putting too many eggs in that basket," he said. "We did have an unfair system, which was both racially biased and penalized poor people. Now we have a system that's just racially biased, but doesn't penalize poor people to the same extent."

An attempt at change

It's not like Connecticut hasn't tried to end money bail. When he was governor, Malloy tried to eliminate bail for many misdemeanors in 2016, to no avail. In 2017 he tried a different tack and advocated for proposals that would have taken a big chunk out of the commercial bond industry in Connecticut.

The policies would have barred judges from setting bond in most misdemeanor cases and allowed judges to release defendants on a cash deposit of 10% of the bond. The cash they would have had to put down was similar to the fee charged by bail bond agents, except defendants would have gotten that money back had they showed up to court.

"The opposition from the bail bond industry was super intense," said David McGuire, the executive director of the ACLU of Connecticut. "There's just a huge amount of resources that the bail bonds industry will pour into any push to change or eliminate our cash bail system."

Legislators ultimately compromised with the bondsmen, barring judges from imposing cash-only bail, a practice that effectively denies bail to hundreds of indigent and moderate-income defendants, and from setting bail in most misdemeanor cases.

Two years later, a committee of Superior Court judges voted to allow criminal defendants to bond out by posting 10% of their bond if the total amount is \$20,000 or less. Unlike if they use a bail bondsman, they get the money back once their case is resolved.

If they have a track record, I think it’s appropriate for the court or whoever is imposing the bail to consider those factors.

SEN. JOHN KISSEL, R-ENFIELD

The reforms took a significant chunk out of the commercial bail industry’s income.

“We need a volume of good and bad transactions in order to remain solvent,” said Andrew Marocchini, the founder and general manager of BailCo Bail Bonds. “And essentially, what has been done is, the good part of these transactions has been removed from our marketplace.”

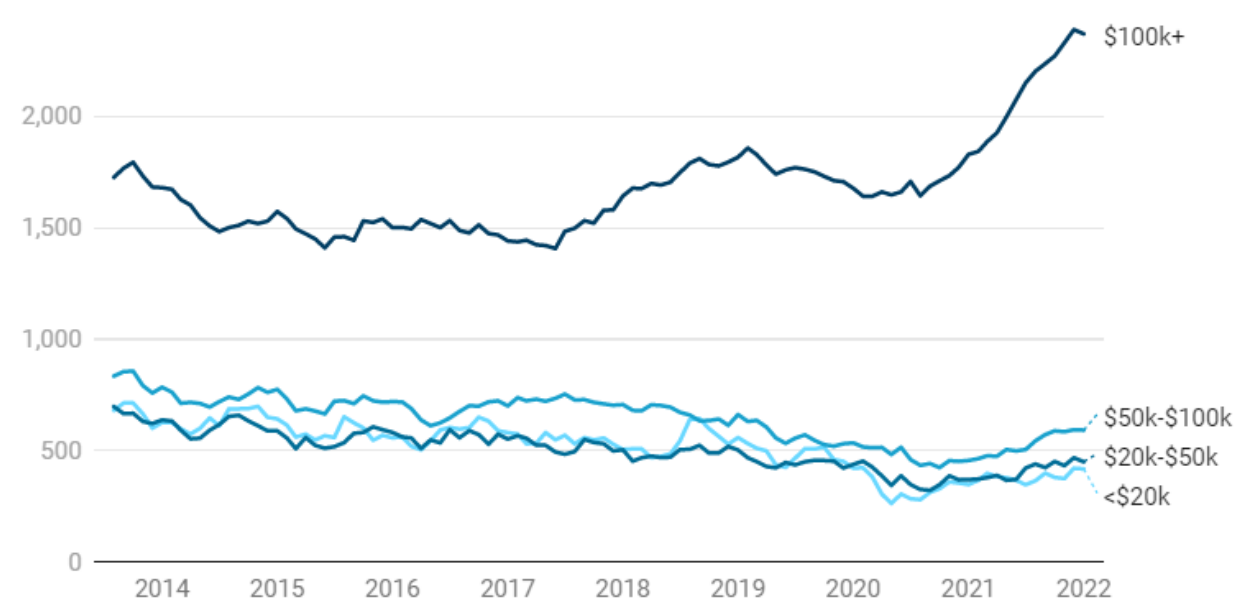
By the end of 2021, almost two full years since the rule change went into effect, one in four defendants released from custody at a police department got out by posting 10% of their bond. Professional surety companies, which were responsible for over 80% of financial releases in 2019, now make up only 45% of releases, according to data reported by the Sentencing Commission.

What’s more, data suggests defendants who post the 10% option don’t show up to court less than other defendants and are rearrested at slightly lower rates than defendants posting through professional sureties.

The Judicial Branch estimated \$1.75 million has been returned to defendants between Jan. 1, 2020 and Jan. 5, 2022 through the 10% rule.

Connecticut pretrial detainees by bond amount

The number of people held in Connecticut prisons before trial has steadily risen since the beginning of the COVID pandemic, especially for people held on higher bail.



Source: Connecticut Department of Correction • [Get the data](#) • Created with [Datawrapper](#)

As the number of all pre-trial detainees has increased since the pandemic, those held on the highest bond — more than \$100,000 — have accounted for a greater portion of them. In January 2020, about 55% of all pretrial detainees had bond over \$100,000, and by January 2020, the percentage had increased to 62%.

Some people are still staying locked up in jail for years, waiting for a trial.

At least two Black men charged with murder have been acquitted by juries over the past year. [Brandyn Grant-Ford](#) spent four years in prison waiting for his trial, unable to post his \$500,000 bond. A jury found him not guilty of murder last August. In May, a jury found [Hakeem Atkinson](#) not guilty in a fatal 2012 shooting. Atkinson spent almost five years in jail on a \$1 million bond.

“Most murder case defendants are not out on bond,” said Attorney John Gulash, who represented both men. “But not because they're necessarily at higher risk of flight. It's just kind of a bit of a reaction to the gravity of the charge.”

Grant-Ford, Atkinson and others with bonds they can't afford often face an agonizing choice: post bond and, if you use a bail bondsman, never see that money again, or use that money to hire a private attorney but stay jailed.

“A lot of people don't have bail money. So, that's one strike against them. They're incarcerated, sitting in pretrial, fighting their cases while they're inside,” said Jewu Richardson, co-director of the CT Bail Fund. “You're telling people that, 'Hey, if you want to defend yourselves adequately, you have to pay the ransom of a bond.’”

McGuire said the reforms were well-intentioned but not as successful as advocates had hoped. Despite the changes, just like in New Jersey, people — disproportionately minorities — are still sitting in jail because they can't afford to bond out, McGuire said.

“We as advocates, and a lot of folks, looked at it as a building block for eventually ending cash bail entirely in Connecticut,” McGuire said, “and figuring out a way to have preventative detention that is used sparingly and in a way that does not exacerbate our racial inequities in the state.”

The roadblocks

McGuire's fears about preventative detention are one of the challenges to ending cash bail in Connecticut: that whatever replaces it will disproportionately impact people of color, worsening the state's already wide racial disparities in its incarcerated population, which as of [May 1](#) was 42% Black.

“I always have to be concerned that Black and brown people will continue to get the brunt of an unjust system,” said Barbara Fair, a member of Stop Solitary CT.

As co-chair of the Judiciary Committee, Sen. Gary Winfield has played a major role in passing significant criminal justice reforms in recent years, including reducing [solitary confinement](#) in prisons and [reforming policing](#) in the wake of George Floyd's murder. He has gotten major criminal justice bills through the legislature and to the governor's desk for years.



Sen. Gary Winfield MARK PAZNIOKAS / CTMIRROR.ORG

But political success is one thing. Achieving policy change — and reducing the criminal justice system's disparate impact on minorities — is another. The criminal justice system seems to course-correct itself, Winfield said, always ensnaring people in its grip, no matter what Winfield and his legislative colleagues do. The weary legislative tactician wondered if that course correction was because lawmakers always start from the perspective that the system is deserving of reform, as if the origins of mass incarcerated weren't rooted in racism.

"You're saying, 'Well, clearly, it's been exposed that this system has a disparate impact on people. Is there something we can do to make the system have less of a disparate impact, make it work a little better?'" Winfield said. "But that's not the same thing as saying, 'Should we be doing what we're doing at all?'"

Winfield isn't against ending money bail. "Everything to me is dependent upon what we do in its place," he said.

The element that was so essential to the elimination of cash bail in New Jersey — bipartisan support — doesn't exist in Connecticut.

Sen. John Kissel, R-Enfield and ranking member of the Judiciary Committee, said he hasn't heard any concerns from constituents about the state's money bail system. He said the purpose of bail is to make sure someone comes to court and faces their charges, and though they are innocent until proven guilty, Kissel thinks their likelihood of committing more crimes should be factored into their bond amount.

"The ultimate primary purpose of bail is not to keep someone incarcerated because they may commit another crime, but if they have a track record, I think it's appropriate for the court or whoever is imposing the bail to consider those factors," Kissel said. "We have to create a good balance where the bail system fulfills its appropriate ends, with also an eye toward maintaining public safety, and at the same time do whatever we can within reason to make sure no one is unjustly incarcerated pending their trial, simply because they're poor."

Any shift from a cash bail system in Connecticut would require a constitutional amendment, a [high legislative bar](#) that likely would require support from members of both parties.



WIKIMEDIA

Bipartisan support would also provide political insulation when someone inevitably commits a crime after being released following an arrest. Without bipartisan support, bail reform would be a political lightning rod wielded as a cudgel against those who voted for it.

Reform in New York, for instance, has been highly politicized, despite data suggesting that it's working.

New York City Mayor Eric Adams, police, and tabloid newspapers have [decried the new policies](#), depicting a city in chaos. [Figures](#) published by the New York City Comptroller showed that, while reforms reduced the number of people subjected to bail, there was no change in the share of people rearrested while awaiting trial in the community. However, bail continues to be a big reason for pretrial detention and continues to take money from low-income communities of color.

Despite Adams' public statements, his Office of Criminal Justice published data [showing](#) most of the people arrested in the city do not have pending cases.

Of the nearly 48,000 people in March 2021 waiting at home for their criminal cases to be resolved, 96% were not rearrested at all during that month, and only 1% were rearrested for a violent felony offense, according to New York criminal justice data.

And yet, [almost two-thirds](#) of New Yorkers think bail reform led to an increase in crime, an indication that the [fear-mongering](#) over reform is souring the public's understanding and support for it.

[Bail] was designed to guarantee appearance in court and guarantee the defendant's pretrial liberty.

JEFF CLAYTON, EXECUTIVE DIRECTOR OF THE AMERICAN BAIL COALITION

Critics of the money bail system point out that it doesn't prevent crime. Dangerous individuals with access to financial resources can simply post bail and go home, while less-dangerous people who don't have money stay stuck in jail.

Even members of the bail bonds industry say that Connecticut's current bail system wasn't created to protect public safety.

"It was designed to guarantee appearance in court and guarantee the defendant's pretrial liberty," said Jeff Clayton, executive director of the American Bail Coalition.

Just like when the public clamors for change when someone commits a crime after getting out of jail thanks to bond reform, Lawlor predicted that, eventually, someone is going to commit a crime after posting bail.

"Sooner or later, some guy who was able to post a million dollar bond is going to kill somebody while he's out," Lawlor said. "And then people are going to say, 'why was that guy out?' And the answer is going to be, 'Well, because in Connecticut, you can't hold a person without bail, because of what our state constitution says.'"

It already happened.

[Russell Peeler](#) was out on bail when he killed Rudolph Snead Jr. in a barbershop in 1998. And he was out on bail when he masterminded the deaths of Karen Clarke and her 8-year-old son, Leroy Brown Jr., who had been set to testify against him for trying to kill Snead the year prior.

Mary Anne Casey, owner of Casey Bail Bonds, Inc. who has been licensed in Connecticut for more than four decades, claimed in [legislative testimony](#) in 2011 that Peeler got out of jail prior to getting his brother to kill Brown and Clarke thanks to a widespread practice known as "rebating," which is when defendants post bond at a discounted rate through a deal struck with a bail bondsman.

"Our legislature just turned a blind eye," said Casey.

There's no question that we're missing opportunities to keep repeat violent criminals from committing further acts of violence.

LUKE BRONIN, HARTFORD MAYOR

More recently, [Jose Cajigas](#) allegedly fired a gun at a Hartford police officer a few hours after allegedly murdering a Hartford woman. He'd been arrested 11 days earlier on probation violation, weapons and drug charges. He paid \$19,000 in cash on a \$270,000 bond and was able to get out of jail. Department of Correction records indicated he is still incarcerated pretrial, held on a \$7,520,000 bond.

"Gun violence is a complex thing with many causes, but there's no question that we're missing opportunities to keep repeat violent criminals from committing further acts of violence," said Hartford Mayor Luke Bronin.

The mayor raised another point: defendants can reach agreements with bail bondsmen to post bond.

"I think a lot of people look at a bond and say, 'Wow, how is somebody going to come up with \$200,000 bond?' But if you only have to come up with 10% of that, and particularly if you are involved in criminal activity that can be lucrative, it's not all that hard," Bronin said. "Bonds are financeable, and they're regularly financed."

Such rebating continues today, Casey said, thanks to an underfunded regulatory system that allows people of means who pose a danger to society to simply buy their way out of jail by posting bail either themselves or through a bondsman at a discounted rate.

“The average person has no idea what is going on,” Casey said. “There is a tremendous public risk here, and no one is paying any attention.”

Steady habits

Cash bail in Connecticut isn't going anywhere any time soon. The Sentencing Commission is putting the final touches on a report on pretrial justice in Connecticut. The assessment looks at states that have mostly eliminated money bail and describes how a pretrial system without money bail might look.

Public defenders and the Division of Criminal Justice both objected to eliminating money bail in a draft version of the report. Each claimed a different model would have the opposite effect: public defenders claimed that too many people would get stuck in jail; prosecutors claimed that such a system would allow too many people to get out of jail and not be held pretrial.

It's hard to step out and think that anything else remotely even is possible.

ALEX TSARKOV, CONNECTICUT SENTENCING COMMISSION EXECUTIVE DIRECTOR

In an unsigned document outlining the department's stance, the Office of the Chief Public Defender expressed concerns that eliminating money bail would harm poor communities and communities of color, because poverty exacerbates factors that might make it more likely for a person to be held in jail in a preventative detention system. Plus, the public defenders warned, a preventative detention model might lead to more people being held in jail simply because of the nature of their criminal charge.

“A preventive detention system is likely to result in an increase in certain classes of accused being held at a significantly higher rate, specifically those accused of offenses like domestic violence and animal abuse offenses,” the document reads. “These crimes, while not statistically related to an increase in flight or general risk of reoffense, are emotionally sensitive and likely to lead a prosecutor to request detention. The court system in general is risk averse and judges are likely to grant detention requests in these cases.”

The Division of Criminal Justice, meanwhile, said in a different unsigned opinion that it opposed proposals that excluded certain crimes from a list of detainable offenses, and those that didn't take into account a defendant's criminal history, their track record of failing to show up to court and their compliance with past conditions of release like probation.

“Such a system would produce the absurd situation of a Court being unable to detain a person even if the person stood in front of the Court and announced that he or she was not going to appear again,” the document reads. “This model fails to recognize the fact that the risk of financial forfeiture often is sufficient to guarantee an accused's presence in court while sparing him detention while his case is determined on the merits.”

But there are perhaps practical reasons for the system remaining the way it is, said Tsarkov, the executive director. Judges, prosecutors and public defenders went to law school and have been practicing their whole careers with a money bail system.

“It's hard to step out and think that anything else remotely even is possible,” said Tsarkov.

Then there's the matter of public pressure. Tsarkov said there is no statewide campaign to end cash bail, as there was in [Illinois](#), pressuring lawmakers to reimagine the pretrial system.

"We really have not had a grassroots movement to end money bail," Tsarkov said. "When we think about why this hasn't happened yet, let's think about who is affected: what kind of power do they have? Poor people, and poor people of color, don't have the type of power that middle class and upper-class people have, who can post bond."

Also, the cash bail system is an effective way of processing cases quickly, said Lawlor. Money bail can be used to pressure someone to plead guilty so they can get out of jail without having to pay anything. All they have to do is plead guilty to get time served or receive a term of probation that they can comply with outside of jail.

"If you want to keep a guy locked up pretrial, you ask for a bail that's a little bit beyond what this person can post," Lawlor said. "That way, you know you have leverage to move the case, because the only way the guy's getting out of jail is to plead guilty."

There are benefits to quickly resolving cases, in that it keeps the system afloat and gets people out of jail, Tsarkov said, "but it's the burden that falls on those people without means, because they don't have the means to purchase their way to freedom."

Echoing McDonald's comment at Griffin's chief state's attorney interview, Tsarkov acknowledged that the conversation over whether to end cash bail is happening all over the country.

"At some point we have to have this debate," Tsarkov said. "We can't escape it forever."

KELAN LYONS



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Kelan is a Report For America Corps Member who covers the intersection of mental health and criminal justice for CT Mirror. Before joining CT Mirror, Kelan was a staff writer for City Weekly, an alt weekly in Salt Lake City, Utah, and a courts reporter for The Bryan-College Station Eagle, in Texas. He is originally from Philadelphia.



JUSTICE

When cash bail is high, some families finance freedom through GoFundMe



by Kelan Lyons
August 14, 2022



Bryan Jordan was one of 12 incarcerated people selected of more than 600 applicants to be a part of the Yale Prison Education Initiative's inaugural class. An attachment in Jordan's sentence modification reads: "Mr. Jordan immediately demonstrated himself to be an extraordinary candidate. In his written component, when asked why he wished to enroll in the program, he responded, 'To help myself become a better reflection of what I believe I am capable becoming if given access to a structured education.'" COURTESY ZELDA ROLAND

The burden of bail: A three-part series

The CT Mirror is exploring the effects and challenges of Connecticut's cash bail system.

Two weeks ago: [One man's uphill struggle to stay out of prison illustrates the pitfalls of the system](#)

Last week: [Why New Jersey got rid of most cash bail](#)

This week: Financing freedom through GoFundMe

Audrey Jordan wasn't sure what size clothes to buy for her brother Bryan. He hadn't worn anything other than a prison jumpsuit in 16 years.

Surely his weight had changed since he was sentenced. She perused the racks at Marshall's and TJ Maxx and settled on a pack of white T-shirts, tank tops and jeans. They all wound up being too small.

It was the middle of 2021. Audrey had to get clothes because she knew Bryan would be coming home after his next court date, which was coming up soon.

Audrey's daughter, Alexis, had led a years-long effort to raise money so her Uncle Bryan could post \$600,000 bond. It took two years, but they finally had enough money to pay a bondsman — typically 10% or less of the bond amount.

No one in the family had anywhere near enough cash, so they had to collect it from donations and at community fundraising events. It was hard, Audrey said, especially when they were asking people to donate during a pandemic, when money was tight because people were out of work.

“But you want your loved one home,” Audrey said, “and so you just do what you have to do.”

They were assisted by the Connecticut Bail Fund, a New Haven-based group that helps people post bail so they can await trial at home. Jewu Richardson, the nonprofit's co-executive director, said it is a “harsh, sad reality” that families like the Jordans have to rely on community events and a [GoFundMe](#) to post bail.

But it's unusual, Richardson said, for a family to raise as much cash as the Jordans did.

“What Brian represents is a population of people that are suffering behind the walls, that are in similar situations like his, but they don't have the resources to advocate on their behalf,” said Richardson.

Bryan walked out of the New Haven courthouse a free man on July 27, 2021. He wore his orange jumpsuit as he stepped into the summer heat, lowering his mask to protect him from COVID-19 to smile at his loved ones as they cheered his release.

Audrey and Alexis were elated. Alexis, who was 8 when her uncle went to jail for manslaughter, said it felt like a weight had lifted off her shoulders when she saw Bryan walk out of the courthouse. Audrey, meanwhile, said it felt like their family was finally complete.

“The missing piece of the puzzle was back in the family again.”

A way out — for a price

On Sept. 19, 2005, Bryan Jordan got into a fight with Curtis Hannons and Hannons' brother in the McConaughy Terrace housing project in New Haven. The crowd around them broke up the dispute before things got out of hand. Bryan got in his car and drove away, but he came back a few minutes later.

The fight resumed. The people around Hannons and Jordan tried to calm them down again. Bryan would testify in later hearings that although he didn't see their weapons, he knew Hannons and his brother had guns.

Someone fired their weapon. Bryan pulled out a gun of his own and shot back, testifying that he didn't think there was anything he could do except fire in the direction where he thought the first shot came from. Hannons was hit in the head, two inches below his right ear. He was transported to the hospital, where he later died.

Bryan fled to Georgia. Department of Correction records indicate he was admitted to jail on Nov. 14, 2005. Two years later, jurors found him guilty of first-degree manslaughter with a firearm and carrying a pistol without a permit. He was sentenced to 45 years.

A decade into his sentence, Jordan filed a writ of habeas corpus. He claimed that the lawyer representing him in the 2007 trial had been ineffective because she hadn't called six witnesses — among them Alexis and Audrey — who might have changed the outcome.

He had that luxury of having people that really cared and supported him, that kept amplifying the injustice that he was going through.

JEWU RICHARDSON, CO-EXECUTIVE DIRECTOR, CONNECTICUT BAIL FUND

Superior Court Judge Hunchu Kwak sided with Jordan, ruling on Oct. 1, 2018, that there was no strategic reasoning for not calling those witnesses to testify to support Jordan's claim that he had been acting in self-defense.

The ruling gave Jordan the chance to get out of prison on bail. After the judge's decision, Jordan was technically being held as a pretrial suspect again, since Kwak ruled he could be tried again for manslaughter.

The state appealed Kwak's ruling, but Jordan had a chance to bond out before the case was resolved. On May 21, 2019, a judge set the bond at \$450,000, ordering that if he was going to post it, he must do so at the courthouse so the judge could consider subjecting him to electronic monitoring.

State's attorneys — who in previous court hearings had described the shooting as a "cold-blooded killing" — sought to raise the bond after the judge set it at \$450,000, arguing in July 2021 that Jordan might flee because an appellate court had since overturned Kwak's decision and the case was in appeal limbo. After all, the state argued, he'd run before when he was facing prison time, when he went to Georgia after Hannons' death.

"The court should increase the bond to ensure his presence to either face these charges once again or to turn himself in to serve the remainder of his sentence if the Connecticut Supreme Court affirms the Appellate Court's decision," Craig P. Nowak, senior assistant state's attorney, wrote in a motion dated July 16, 2021. Judge Gerald Harmon set the bond at \$600,000.



Bryan Jordan sits with his family after they helped bond him out of jail. Jordan's niece, Alexis, said they had to get 10 cosigners in order for the bail bondsman to take a chance on Jordan. "People profit off of this, profiting off your desperation. I was desperate, I just wanted to get out," Jordan said. "And people in your family want to see you out, so they don't care about signing them papers. There's nobody that's gonna be upset about saying I put my credit or my collateral on the line, because you want to see your family member." PHOTO PROVIDED BY ALEXIS JORDAN / CTMIRROR.ORG

Raising the money

Alexis started collecting donations in May 2019, after Bryan's bond was set at \$450,000. She started a GoFundMe account and shared it on social media, and she took money she earned from her business selling dog and cat treats and put it toward Bryan's bond. The family held "Rasta Pasta" events and fish fry dinners. And they partnered with Connecticut Bail Fund, helping raise awareness about Bryan's case by talking about it on a radio show.

"I feel like the more we branched out and worked with other people, that actually helped expose this," Alexis said.

The Bail Fund typically works with incarcerated people whose bonds are less than \$20,000. But Richardson knows Bryan personally, and his organization and others in the advocacy community kept in touch with Bryan while he was locked up. That meant he had support that many others held pretrial do not.

"He had that luxury of having people that really cared and supported him, that kept amplifying the injustice that he was going through," Richardson said. "A lot of people don't have that luxury of support from the community. So a lot of the stuff that they're doing, they're doing in silence, and it goes unheard and unnoticed."

Rather than imposing their own suggestions, Bail Fund supports families' ideas for how to come up with money, so they shared the Jordan family GoFundMe on social media and helped where they could with the fundraisers and raising awareness. They even offered up their office as a space to host the fish fry.

But their support went beyond the tangible. They became a creator of a community, supporting Bryan and his family by not only helping them get the money to bail Bryan out but by showing them that they weren't alone in their struggle.

It's therapeutic when things like this happen, where they don't have to suffer by themselves.

JEWU RICHARDSON

There's an empowerment that comes from the Bail Fund's efforts, Richardson said. Many families trying to raise money to bail someone out go through those experiences alone. Bail Fund's support of families shows them they have support not only from the nonprofit but from their fellow community members.

"It's therapeutic when things like this happen, where they don't have to suffer by themselves," said Richardson.

Bryan needed community support. "Our family is not the family that just has hundreds of dollars lying around in a savings account, where we can just pull out, 'Oh well, here's \$10,000 to go towards a bail,'" said Audrey.

And it's not like Bryan could post it by himself. After all, Richardson said, besides a paltry sum he might have made working in the prison system, Bryan didn't have an income for the 16 years he was incarcerated.

"How can a person post a bond that high without support from the community?" Richardson asked.

Some people, they're looking at that as, 'I'm not signing my name on the dotted line for nobody, because that's a huge responsibility if things don't go right.'

ALEXIS JORDAN, NIECE OF BRYAN JORDAN

But Bryan's situation coincided with a moment.

Melanie Newport, an assistant professor of history at UConn who has been studying pretrial justice issues for the past decade, said bail funds nationwide have benefited from a surge in donations during the past few years, especially during the pandemic.

"Activists have been able to harness both the energy and expertise of lawyers who were deeply frustrated with the kinds of bail policies that they were encountering," Newport said. "Coupling that with the kind of philanthropic enthusiasm, it's very easy to raise money on platforms like Twitter."

Newport said there are three reasons why bond funds are experiencing an increase in donations. For one, many people had extra money once the country went into lockdown in the early months of COVID-19. Second, people afraid of catching the virus from a mass protest were looking for other ways to support the Black Lives Matter movement after George Floyd's murder. And third, Newport said, bail funds offer donors a chance to make an immediate difference in a person's life by helping them get out of jail.

Newport, who is working on a book about the Cook County Jail, said the Chicago Community Bond Fund received such a windfall of donations that its [website crashed and they encouraged people](#) to donate to other organizations.

“It was kind of a remarkable problem to go from these really small outfits to suddenly they’re almost like more flush than they’re comfortable with,” said Newport.

A shared risk

State statute provides a formula for how much a person is supposed to pay a bondsman for taking on the risk of getting them out of jail. The fee is 10% up to the first \$5,000, then 7% for the balance. In Bryan’s case, that would make his premium, the amount he would have to pay to get out of jail, \$42,150.

The law also allows for people to make a down payment of the full premium, 35% of the cost, so they don’t have to pay the full amount at once. That would have meant Bryan would need to pay \$14,752.50 to get out of jail. He would then have 15 months to pay the remaining \$27,397.50.

Alexis said she and her family ended up raising about \$10,000. But getting the money wasn’t the only hurdle. To ensure the bond company got all its money for bailing Bryan out, Bryan would need co-signers, volunteers who would chip in and cover the cost of the \$500 a month Bryan was supposed to pay if he couldn’t.

Getting people to co-sign was even harder than getting them to donate, Alexis said. “Some people, they’re looking at that as, ‘I’m not signing my name on the dotted line for nobody, because that’s a huge responsibility if things don’t go right.’”

She asked anyone who might say yes, even co-workers who had never met her uncle. The risk even made Alexis nervous; after one of her co-workers offered to co-sign, she told them to forget about it, not wanting them to be on the hook.

Alexis said they wound up getting 10 co-signers, herself included.

You want to make sure your assets are covered in the event the defendant absconds and does not show up in court.

MARY CASEY, OWNER OF CASEY BAIL BONDS INC.

“I knew once Bryan was to come home, he would be on his toes, and he’d actually get a job, and he was going to be the man that he’s supposed to be,” Alexis said. “No missing payments and anything like that. I don’t feel like that would have ever been a problem, because Bryan isn’t that type of person.”

Bond companies need co-signers because they are putting themselves on the line by bonding someone out of jail, said Mary Casey, owner of Casey Bail Bonds Inc. Casey’s company didn’t bail Bryan out, but she has been an active member of the state’s commercial bond industry for almost 45 years.

“We as surety agents are lending defendants money to get out on bail, and just like in a bank loan, you want to make sure your assets are covered in the event the defendant absconds and does not show up in court,” Casey said.

If they do run, Casey said, “you then turn around and go to your indemnitors, and either find out where the defendant is and remand him back in custody or ask they pay the full amount of the bond, because that’s what they legally have signed to do.”



Bryan Jordan gazes out a window, a far cry from the narrowed and barred viewpoints of the prison cells where he spent more than 15 years before getting the opportunity to bond out. “The inhumane treatment of those who can’t afford bail is beyond words. I sit among those who need \$100 to get out, but are subjected to the same treatment as those sentence,” Jordan wrote from a cell at New Haven Correctional Center. “This place is infested with mice, COVID and filth.” CONTRIBUTED PHOTO

The burdens of bond

It cost a lot of money to bond Bryan out of jail, but his freedom was priceless. He tried to make the most of his time at home, getting a job and becoming a fully matriculated student at the University of New Haven, pursuing a degree through the Yale Prison Education Initiative, which he had started earning when he was incarcerated.

He gave talks on the [transformative effects college courses offer the incarcerated](#) and spoke on the Bail Fund’s [radio show](#), offering thoughtful reflections of the time he spent incarcerated and the effect it had on his family. And he [talked about his case publicly](#), imploring prosecutors to use their power of discretion and stop pursuing the case against him.

Bryan described being home after so long as awkward, confusing and frustrating. Getting a job was not as difficult as figuring out how to be a part of a family again.

“Being back in society was hard,” Bryan said in a phone call with the CT Mirror.

His freedom would prove short-lived. On Nov. 5, 2021 the state Supreme Court agreed with the appellate court: Kwak had gotten it wrong. His appellate lawyer petitioned for reconsideration of the decision, which the Supreme Court denied on Dec. 21, 2021. Jordan would have to turn himself in and serve the rest of his 45-year sentence. He’d been free for five months.

He's been gone for two days, and already the bail bondsman called me this morning, asking me what's going on as far as with the bond.

ALEXIS JORDAN

Bryan hadn't been able to save any money when he was home. If he's unable to make his monthly bond payments, the burden will fall to his cosigners.

"He's been gone for two days, and already the bail bondsman called me this morning, asking me what's going on as far as with the bond," said Alexis.

By law, defendants have 15 months to pay the balance of a bond financed by a bondsman. If the balance has not been paid within that time, or if they are 60 days late on a payment, bond agents must file a lawsuit to try and collect from the defendant or their co-signers.

If they are successful in civil court and the payments still aren't made despite the judgment, bondsmen can apply to the court for a wage or property execution, meaning they can place a lien on a person's car or property, or garnish their wages.

But even with a civil judgment in favor of the bondsmen, Casey said, it can be hard to collect money they are owed because, often, defendants and their co-signers aren't working and don't own property.

Co-signers serve as more of a "psychological advantage," in Casey's words, than as someone bondsmen can sue to get their money.

"You would use them to ascertain where the defendant might be," she said. "But more often than not, they probably don't have the financial means to fulfill the legal obligation on the bond."

But someone like Bryan, who is already incarcerated, will be brought to their next court date from jail. There's no risk of what Casey described as a "worst case scenario" for a bondsman, that the defendant goes on the run and the bondsman is on the hook for the amount of their bond.

For five months, [Jordan] had his freedom. And he had to have known his risk — that the appeal might have been denied.

MARY CASEY

Nonetheless, the bail company that got Bryan out of jail has to try to get its money back, Casey said, because if it doesn't, it's essentially a form of rebating — charging less for a bond than what is statutorily required.

Casey has been in the bond industry for more than four decades. As the former president of the Connecticut State Surety Association and vice president of the Professional Bail Agents of the United States, she said she helped write the laws mandating the steps bond companies must take to get the money they are owed. Bond companies earn their money the second a defendant walks out of jail, Casey said, once the bondsman assumes the risk of covering someone's bond if they don't show up to court. Only after the bondsman attempts to collect the money can they write off the debt.

“According to the law, you have no other choice,” Casey said. “What they have done if they fail to collect is rebate the bond.”

Think about it from a consumer standpoint, Casey said. If you have one person held in jail on a \$5,000 bond, the bondsman fee is \$500. If you have another person who has a \$5,000 bond but who only pays \$100 to get out of jail, the consumer in the first example has paid more.

Where’s the fairness in that? Casey asked. And how does it reflect on you as a businessperson if other bail companies are rebating and offering a lower price, and you’re just following the law?

Casey faulted the Department of Insurance, charged with the oversight of surety bond agents in Connecticut.

“If we had a regulatory authority that was responsible and reliable, then they would be doing an audit and recognize that there was not an attempt made to collect, and they would be fined as such,” said Casey.

“For five months, he had his freedom,” Casey said when she learned of Bryan’s situation. “And he had to have known his risk — that the appeal might have been denied.”

People profit off of this, profiting off your desperation. And people in your family want to see you out, so they don’t care about signing the papers.

BRYAN JORDAN

Bryan conceded that the bondsman in his case did their job: they got him out of prison.

But he was frantic to get out, and his loved ones were eager for him to come home, making them eager to co-sign.

“People profit off of this, profiting off your desperation,” Bryan said. “And people in your family want to see you out, so they don’t care about signing the papers.”

Bryan went back to jail on Dec. 27, 2021. Now, he’s trying to get back to the life he started building over the five months he was free. He filed a sentence modification application that relies heavily on the conduct he exhibited when he was out on bond and the issues he raised in his habeas petition.

“Sentence modifications almost always rely on promises: ‘I have been so good while imprisoned,’ they say, ‘that you can trust me to do even better while home,’” Attorney W. Theodore Koch III wrote in the application. “This case is different, because Mr. Jordan has already been served freedom, and he did not waste it. And then, when the Court asked him to go back to prison, he quietly obeyed.”

Considering the length of his sentence, Bryan doesn’t regret posting bond, even if it cost him and his family dearly.

Before bonding out last summer, Bryan hadn’t seen his mother in 10 years. She doesn’t have a car, and couldn’t afford to make the trek to go see him when he was in prisons in Suffield, Newtown or Uncasville.

People who aren't imprisoned take it for granted that they can hug and kiss their mothers on the cheek whenever they want, Bryan said.

"I don't know what type of price you put on that," he said on a phone call two days before going back to jail. "How much would you pay to do that again?"

Two and a half months later, on March 3, 2022, a judge granted Bryan's sentence modification, cutting 20 years off his 45-year sentence. Koch said it wasn't clear when Bryan was getting out, but his next step was to file a commutation.

According to the [Department of Correction](#), the latest date Bryan could be released is Oct. 7, 2027.

This reporting was made possible, in part, through support from the Fund for Investigative Journalism.

CORRECTION

Photo captions on a previous version this story misidentified the photographer and incorrectly attributed a quotation.

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Kelan is a Report For America Corps Member who covers the intersection of mental health and criminal justice for CT Mirror. Before joining CT Mirror, Kelan was a staff writer for City Weekly, an alt weekly in Salt Lake City, Utah, and a courts reporter for The Bryan-College Station Eagle, in Texas. He is originally from Philadelphia.

THE DESERT REVIEW

Imperial Valley news that matters to you

FEATURED

California Assembly attempting to slip zero reform bill through in final hours of legislative session

by Staff Reporter • August 25, 2022



After lying dormant for nearly a year, the California Assembly suddenly resurrected Senate Bill 262 on Tuesday and placed the inactive zero bail bill back on its active legislation list. It is now on the calendar for final passage with only a handful of days left in the current session in an attempt to squeeze the bill through the legislature, according to an American Bail Coalition press release.

Authored by Sen. Robert Hertzberg (D-Van Nuys), the bail reform legislation was withdrawn last September, only days following the horrendous slaying of a 61-year-old Sacramento woman, per the release. Troy Davis was free on zero bail when he committed the murder, despite a lengthy record of violent crimes.

Senate Bill 262 was criticized when it was first introduced by Hertzberg only months after the resounding defeat in November 2020 of Proposition 25 -- another effort by the senator -- which would have abolished cash bail in California, the release said.

"It is outrageous that Senator Hertzberg is putting this zero bail legislation on the third reading and final passage calendar at the eleventh hour. While he has promised to amend it, he had a year to do so and did nothing," said Jeffrey J. Clayton, Executive Director of the American Bail Coalition in the release. "He appears poised to hoodwink the Assembly by attempting to jam through his zero bail legislation one more time."

The legislation, as currently drafted, would implement a zero bail system that would be far more expansive than New York State's bail reform which has been under continuous criticism since it was implemented in 2019 and has since been substantially rolled-back, the release said. All defendants in California would be eligible for an "affordable bail," which would, in effect, end pretrial detention in the state. All criminal cases would qualify, including murder and rape.

The release said the bill would also overrule the California Supreme Court's decision in the case of *In re Kenneth Humphrey* by creating an absolute right to release. The high court had earlier rejected the premise as a constitutional "bridge too far."

Senate Bill 262 would also eliminate defendants having to pay for pretrial services, including house arrest and ankle monitors, according to the release. While appealing on its face, this means that counties will bear the financial burden and will trigger an unfunded mandate, resulting in underfunded pretrial services for those who are truly indigent.

In addition, the bill would create an economic disincentive for bail bondsmen to bail out the innocent. Because Senate Bill 262 requires refunds to all defendants should they win their cases, the net effect is that greater numbers of innocent individuals would be left in jail, while the guilty would benefit and be set free, according to the release.

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Photographer: Adam Glanzman/Bloomberg

Eleventh Circuit Indigent Bail Decision Slows Push for Cash Bail

Aug. 24, 2022, 1:00 AM

The Eleventh Circuit recently rejected the assertion that setting monetary bail discriminates against the indigent and violates their constitutional rights. Jeffrey J. Clayton, executive director, American Bail Coalition, contends the decision undercuts a movement against cash bail set in motion by former US Attorney General Eric Holder.

The U.S. Court of Appeals for the Eleventh Circuit on July 29 [overturned](#) a federal district judge's decision holding that the bail system in Cullman County, Ala., was unconstitutional in a case precipitated by the singular efforts of then-US Attorney General Eric Holder.

Holder launched the legal movement against monetary bail in 2015 in the case of [Jones v. The City of Clanton](#).

The latest case of [Schultz v. Alabama](#) concerned a basic question: If someone cannot afford bail, is it impermissible discrimination, based on wealth, when a person with means would avoid jail on the same bail amount?

The court, in a 2-1 decision, determined that Cullman County did not engage in discriminatory bail practices and as a consequence, indigent defendants were not deprived of equal protection under the law. This marked the second time that the Eleventh Circuit rejected claims made by plaintiffs.

Although the plaintiffs may appeal the ruling, the US Supreme Court has previously denied cert in two similar cases, so it is considered unlikely.

Circuit Rejects Indigent Bail Theory

Like many places in the country, Cullman County determines bails by a schedule, which are preset by judges based on the criminal charges. Defendants who cannot meet the bail amount, or wish to seek a reduction, are given the opportunity to argue that in court later.

In *Schultz*, several defendants alleged that they could not afford their misdemeanor bail. One of the named plaintiffs said he faced a \$1,000 bail he could not afford, was not represented by counsel, and given a single two-minute hearing.

During the intervening months after the lawsuit was filed, the judges in Cullman County issued a new bail order that was starkly similar to the one adopted in the *Jones* case by Clanton County, Ala. In essence, all defendants would have a meaningful opportunity to argue bail, set by a schedule, within 72 hours of arrest.

The Eleventh Circuit rejected the notion that everyone should be able to get out of jail on a bail they can afford—the core concept of Holder’s indigent bail theory. In its ruling, the court once again denied the posited right to release of defendants on bails they could afford.

The majority opinion said the right to pretrial release is not absolute, but is conditional, based upon the accused providing adequate assurance that they will stand trial and serve their sentence if found guilty. The very premise that all individuals would be released if they only had money proved to be a flimsy one.

Further, the court ruled that indigent defendants actually do not face discrimination at all under the Equal Protection Clause. The court ruled that “indigent pretrial detainees in Cullman County are not discriminated against solely based on their inability to pay, and neither do they suffer an absolute deprivation of a meaningful opportunity to obtain pretrial release.”

It further determined that the conclusion they drew was amply supported by case law.

The court reiterated its position that bail serves an important purpose, while explaining that indigent versus non-indigent arrestees differ by their very nature. Only the non-indigent have demonstrated they will appear in court as ordered by virtue of their being able to meet the terms of Cullman County’s bail schedule.

On the other hand, arrestees unable to satisfy these terms are not being discriminated against due to a lack of funds. Rather, “they are being discriminated against for failure to ensure in the first instance their future appearance at trial,” the majority said.

The provision of a hearing was also addressed by the federal appeals court, as it said it afforded the indigent with the opportunity to provide the necessary assurances to guarantee their appearance in court. Such conditions may be monetary or non-monetary, provided they sufficiently protect public safety.

Lastly, the court also rejected the plaintiffs’ substantive due process claim calling it a “nonstarter.” It held that they had failed in their attempt to conflate the difference between substantive due process and impermissible discrimination in this case by “smuggling a substantive due process claim” into the Equal Protection Clause.

Adequate Due Process is the Solution

Now in private practice, Holder has been active in local jurisdictions, causing [unwarranted turmoil](#) and litigation expenses over the last seven years.

Fortunately, the nation has reason to celebrate now that the answer of adequate due process has been determined to be the solution to the indigent bail problem. We can also rest much easier now as we can finally stop the wholesale release of hardened criminals under the rubric of class warfare.

The decision in the *Schultz* case stands to mark the end of this bumpy chapter in the history of the right to bail in this country. It affirmed what we knew all along: Indigence is not a shield that excuses criminal behavior.

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

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Despicable CA "Zero Bail" Bill Is Back

By john and ken staff
Aug 26, 2022

LA goon hack politician Bob Hertzberg must have been encouraged by the Gascon recall botch to bring back his looney idea to eliminate cash bail in California. He pulled his last Zero Bail effort after catching heat over this crap idea.

Hertzberg is trying to jam this garbage through the dopey woke legislature to further eliminate consequences for dirtbag criminals.

Don't be surprised if this thing gets a signature from Governor Dippity-Do.

[From Katy Grimes at the California Globe:](#)

The bill to reform/destroy the bail industry in California by annually revising statewide bail schedule and set the bail amount closer to the charged person's ability to pay, Senate Bill 262 by Senator Bob Hertzberg (D-Los Angeles), has been taken off the inactive list in the last days of the 2022 legislative session and is now eligible to be voted into law.

Zero bail was [rejected by California voters](#) in 2020, but [introduced](#) as legislation in January 2021 by Sen. Hertzberg as [Senate Bill 262](#), is ironically named the "Safe and Resilient Communities Act."

As one bail agent told the Globe, "Hertzberg wants to rid California of every Bail Bond Agency. Cost to CA Taxpayers will be astronomical, not to mention all the jail overcrowding."

Former LA City Councilman and LAPD officer Dennis Zine called in today to share his fears about this BS....





California lawmakers reintroduce amended zero bail bill in waning days of session

By Madison Hirneisen | The Center Square
Aug 26, 2022 Updated Aug 26, 2022



Bigflick / Shutterstock.com

(The Center Square) – With California’s legislative session set to end Aug. 31, lawmakers this week resurrected a last-minute proposal to reform the state's bail system.

The proposal, contained in **Senate Bill 262**, would prohibit the “costs relating to the conditions of release on bail from being imposed on persons released on bail or their own recognizance,” according to the bill text.

The bill would also require a court to return money paid to a bail bond licensee on behalf of the arrestee if the case is dismissed or no charges against the arrestee are filed within 60 days. The measure allows a bail bond licensee to retain a surcharge of 10%, meaning an arrestee could get back 90% of their money if a case is dismissed and charges aren’t filed within the deadline.

In April 2020, the California Judicial Council established a policy to set bail at zero for most misdemeanor and low-level felonies to keep the jail population low during the pandemic, as reported by ABC7. The council voted to end that policy in June 2020.

Sen. Robert Hertzberg, D-Van Nuys, the author of SB 262, had previously introduced the measure in January 2021 to require an affordable bail for many offenses. Hertzberg ultimately decided to shelve the measure after the **murder of 61-year-old Kate Tibbitts** in Sacramento last September. Tibbitts was raped and murdered in her Sacramento home. The accused killer, Troy Davis, had a past criminal history and was released on zero bail for a June 2021 car theft, **according to KCRA**. Davis also accused of killing Tibbitts' dogs and setting her home on fire.

A previous version of SB 262 would have required a court to “first consider whether nonfinancial conditions will reasonably protect the public and the victim and reasonably assure the arrestee’s presence at trial” before setting a bail amount. If a court ultimately decided that bail was necessary under these conditions, courts would be required to inquire about the arrestee’s ability to pay the bail without “substantial hardship,” thus requiring courts to set an affordable bail.

The current amended version of the bill appears to have struck the provisions requiring affordable bail. A spokesperson for Hertzberg’s office, however, could not confirm

whether or not the affordable bail provision still applies to the amended bill. Hertzberg's office did not respond to comment requests from The Center Square within deadline about the reintroduction of the legislation.

The reintroduction of the measure garnered pushback from Republican lawmakers in the Senate earlier this week. Senate Republican Leader Scott Wilk, R-Santa Clarita, cited data from the Yolo County District Attorney that revealed 420 of the 595 individuals released without bail in the county were rearrested.

"The numbers don't lie, and it is obvious zero bail is a fail for the public's safety," Wilk said in a statement.

Jeff Clayton, the executive director of the American Bail Coalition, voiced concern about the provision in the bill that would require refunds for bail premiums in certain situations.

"The big problem is that it requires refunds of bail premiums when the case is dismissed or charges aren't filed, and that's a major problem because bail agents are only going to be economically incentivized to bail out the guilty and not the innocent," Clayton said. "If somebody's provably innocent, you wouldn't want to bail them out because you're not going to get paid. And so that's going to flip the presumption of innocence the wrong way basically in practice and create results that we don't want."

Clayton added that if this bill is signed into law, it could result in situations where "defendants will just have no incentive to show up in court and no incentive to not continue to commit crimes."

According to legislative records, the bill was moved from the inactive file on Tuesday, and the Assembly voted to amend the measure on Thursday. Lawmakers have until Wednesday to get the bill out of the Legislature and on to the governor's desk.

Corrections and Clarifications

This story has been edited since initial publication to to correctly reflect how the amended bill would reform the bail system, contrast the two bill versions and correctly state the criminal history of Kate Tibbitts' accused killer.



Madison Hirneisen

Staff Reporter

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Daily Journal

Government

Aug. 26, 2022

Bob Hertzberg makes one last assault cash bail

The Van Nuys Democrat's SB 262 was taken off the Assembly's inactive file. If passed, it would demand the Judicial Council to revise the bail schedule by next year and require courts to "conduct an inquiry into the arrestee's ability to pay" before requiring cash bail.

In the closing days of his long career in the California Legislature, Sen. Robert Hertzberg is flinging one final harpoon at his white whale: the state's cash bail system.

On Tuesday, the Van Nuys Democrat's SB 262 was taken off the Assembly's inactive file. If passed, it would demand the Judicial Council to revise the bail schedule by next year and require courts to "conduct an inquiry into the arrestee's ability to pay" before requiring cash bail. SB 262 would also require bail bond companies to repay arrestees who made all their court appearances or who ultimately did not face charges.

Term limits will force Hertzberg from office before the end of the year. Efforts to reach him for a comment on Thursday were unsuccessful.

The bill passed the Senate in 2021 but has sat in the Assembly inactive file for nearly a year. Jeff Clayton, the executive director of the American Bail Coalition, said his organization spotted the move through its regular legislative monitoring.

He said his organization will respond if SB 262 becomes law.

"We would be in the same position last time as we were under SB 10, which is we wouldn't be able to operate so we'd have to consider whether to do a referendum or litigation," Clayton said.

Hertzberg's SB 10, which Gov. Jerry Brown signed in 2018, would have phased out cash bail in California. However, a coalition of bail companies put a referendum on the ballot. Proposition 25 received a 56% "no" vote in the 2020 general election, invalidating the law.

Hertzberg introduced SB 262 less than three months later. It would still allow judges to detain people deemed a flight risk or threat to public safety. But Clayton said unlike previous legislation and the zero bail schedule the Judicial Council used early in the pandemic, SB 262 does not include specific exceptions for people arrested on suspicion of a serious and violent felony.

"It's a right to an affordable bail, which essentially means no one who is bailable in California would be held pending trial because they would be released on bails they could afford, which in most cases would be zero," Clayton said.

Bail companies typically keep around 10% of the money paid by people who aren't convicted and who make their court appearances. Clayton said this has the paradoxical effect of helping innocent people.

"There's a provision that grants refunds when the charges are dismissed, which in essence means there's a financial disincentive to bail out the innocent," Clayton said.

Thursday was the deadline to amend bills without a special waiver. All legislation must pass by Aug. 31.

#368877

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CityLab
Government

Texas Bail Reform Reduced Jail Time and Crime, New Study Says

Ending cash payments for most low-level offenses is working for Greater Houston, research shows.



Photographer: David Paul Morris/Bloomberg

By
Fola Akinnibi

A federally mandated change in the misdemeanor bail policy of Harris County, Texas, has resulted in fewer low-level offenders in jail and improved public safety, according to a new study.

The bail reforms in the county that includes Houston, ordered five years ago as part of a consent decree, have resulted in a 13% increase in people released within the first 24 hours of a misdemeanor arrest and a 6% decrease in new prosecutions over the three years following arrest, indicating that releasing these defendants doesn't increase recidivism, according to the study by the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania.

"This idea that when you release people charged with these low-level crimes you're going to harm public safety, the data doesn't support that at all," said Paul Heaton, academic director at the Quattrone Center and the lead researcher on the study. "You can fix this and you can do it in a way that doesn't compromise public safety, it doesn't compromise accountability, it ratchets back the cost of the criminal justice system."

The study looked at 517,000 cases in the Harris County judicial system between January 2015 and May 2022 to assess the impact of a federal consent decree that eliminated cash bail for most people charged with misdemeanors.

The study found a 15% drop in guilty pleas, combined with a 17% reduction in the likelihood of a jail sentence and 15% drop in convictions, which the study's authors say indicates that fewer innocent people are serving time for crimes they didn't commit.

Consent Decree

The consent decree followed a class-action lawsuit that alleged the county's policies led to people who couldn't afford bail for misdemeanor charges being held longer than those with the ability to pay, a violation of the Constitution.

The lead plaintiff was a woman who was arrested for driving on an invalid license and jailed because she couldn't pay \$2,500 bail. The study's authors said the Harris County changes could serve as a blueprint for other jurisdictions, allowing governments to reap the same benefits without having to deal with a costly lawsuit.

"We looked at this particular reform because it got national attention when it occurred in 2012, and, in my view, is actually politically feasible in many places," Heaton said in a statement. The study was done with assistance from Houston-based Arnold Ventures, a philanthropic organization founded by billionaires Laura and John Arnold.

"We show that it's possible to change the pretrial system and release more people in a way that benefits the general public, helps defendants, and doesn't lead to more crime. Harris County provides an example of that," he said.

Judges typically decide whether someone will be held or released as they await trial following an arrest. That can take months or even years — nearly two-thirds of the US jail population, about a half-million people, are there awaiting trial, according to federal data. Many cases don't make it to trial at all. A January report from the US Commission on Civil Rights found that 60% of defendants end up in jail awaiting trial because they can't afford to post bail.

Cash bail, where a court asks for a sum of money up front to ensure that a defendant returns for a court date, is one of the most common terms of release. The amount is typically set at a judge's discretion. Critics of the practice say it is a penalty for poverty that disproportionately affects people of color.

Other States

New York eliminated cash bail in 2020 for most misdemeanors and nonviolent felonies, which make up roughly 90% of arrests. The law has been amended twice to add additional instances where judges can ask for cash bail. Illinois also passed a law in 2021 eliminating cash bail for all arrests, though it allows judges to seek other alternatives or simply detain individuals ahead of trial. That law will fully take effect Jan. 1.

Texas and its Republican state legislature passed a law last year that would require cash bail for individuals accused of violent felonies, restricting judges from using other pretrial release conditions like drug testing and electronic

monitoring.

New York City Mayor Eric Adams has sought to link the changes in the bail law to increases in crime, though it's not clear that there's a connection. Chicago Mayor Lori Lightfoot said there were "violent, dangerous offenders" released on electronic monitoring and asked for a pause on the implementation of some parts of that state's new bail law.

Jeff Clayton, executive director of the American Bail Coalition, an industry group for bail insurance companies, said he sees jurisdictions, especially those in the South, moving away from changes like those in New York and Illinois.

That means more people will be held in jail pretrial, which he admits will have a disproportionate effect on people of color.

"The other thing we're seeing is calls for preventative detention to just say we don't want these people out," Clayton said.

Opposing Reforms

Harris County District Attorney Kim Ogg opposed the federally mandated reforms, and has continued to push for more restrictive bail provisions. Last fall, she released a report questioning the validity of a federal monitor report on the status of the reform effort. She also testified in favor of a bill that would require cash bail, regardless of offense, for any individual who had been previously convicted of a violent crime.

Even a group that has aggressively lobbied against pretrial release in many cases has said little about the changes to the misdemeanor bail practices that stem from the consent decree. Crime Stoppers of Houston, which runs a tip line and does victim advocacy work, said the changes were a "non-issue."

"We really didn't have much of an issue with releasing the majority of defendants with misdemeanors," said Andy Kahan, director of victim services at Crime Stoppers of Houston. Instead, the organization is concerned with people being released after felony arrests, he added.

The court-appointed monitor in the case released a report in April projecting that Harris County would have saved \$93 million in court costs, while defendants and families would have saved \$478 million if the reforms were implemented in 2015. That should be persuasive for jurisdictions considering making the change, Heaton of the Quattrone Center said.

"It was unfortunate that it took a lawsuit and millions of dollars of spending on lawyers and this controversy to enact this," Heaton said. "Instead of getting sued and waiting for someone to impose this from the outside, here's something you can implement."

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The Senior Lawyer Issue

Civility and Professionalism: The Movie

How Virginia's Highest Court Left a Library in West Virginia

A History of Firearms Regulation in Virginia until 1873

Get Out of Jail Free?

by Henry H. Perritt Jr.



Adobe Stock

A bail reform movement has been sweeping the country.¹ Its advocates urge the release of more people held in pretrial detention and oppose cash payments as a condition of release. Virginia is a model of these new attitudes toward bail. Amendments to the Virginia bail statute that became effective in July 2021² merely codify what already is common practice around the state.³

The amended law requires bail unless a judicial officer finds probable cause to believe that the detainee will not appear for trial, or that his liberty will constitute “an unreasonable danger to himself, family or household members ... or the public.”⁴

Judicial officers must consider eight non-exclusive factors among “all relevant information” in making bail determinations:

- i. the nature and circumstances of the offense;
- ii. whether a firearm is alleged to have been used in the commission of the offense;
- iii. the weight of the evidence;
- iv. the history of the accused or juvenile, including his family ties or involvement in employment, education, or medical, mental health, or substance abuse treatment;
- v. his length of residence in, or other ties to, the community;
- vi. his record of convictions;
- vii. his appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings; and

- viii. whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, victim, or family or household member.⁵

The fourth (ties to the community), fifth (length of residence), and seventh (past appearance or flight) relate to the probability of appearance at trial. The other factors mostly relate to danger to the public.

Section 19.2-123 allows release only on a secured bond of an individual previously convicted of a felony or who is already released on a bond, but this provision may be waived by the commonwealth’s attorney, as it has been in Charlottesville and Albemarle Counties.

The factors now required to be considered in granting bail are similar to those imposed by § 19.2-121 for fixing the terms of bail. So, under the amended statute, the judicial officer considering bail must apply a multi-factor test twice, once in determining eligibility for bail at all and then again in determining the terms of the bail.

Evaluating bail reform requires an understanding of how the bail system works. Under § 19.2-80, an arresting officer executing a warrant must bring the arrested person before a judicial officer, usually a magistrate, “without unnecessary delay.” The judicial officer then must immediately conduct a bail hearing and admit the accused to bail or commit him to jail.⁶

Under § 19.2-82, a person arrested without

a warrant must be brought before a magistrate or other judicial officer authorized to issue warrants for a probable cause hearing. If a warrant is issued at that hearing by a magistrate, the magistrate must proceed to conduct a bail hearing.

If the magistrate denies bail, the general district court judge applies the statutory factors in the first appearance or “advisement,” which must occur within 48 hours after arrest. Decisions to deny⁷ or to grant bail⁸ are appealable to the next higher court.

Terminology can be confusing. Under § 19.2-119:

- *Bail* is the most general term. It is “the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.”
- *Bond* is “the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.”
- *Recognizance* is a “signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.”

Theoretically, both a recognizance and a bond may be required as conditions of bail, as when third-party sureties guarantee performance under a personal recognizance.

A detainee posts a *cash bond* when he pays the amount of the bond, which is refundable upon his appearing for trial.⁹ A *surety bond* is posted by a third party, usually a bail-bond firm, on the detainee’s behalf. The surety posts the full amount of the bond, in exchange for a non-refundable fee, usually 10 percent of the bond. If the detainee fails to show up for trial, the bail-bond agency has statutory powers to aid in his apprehension.¹⁰

According to a 2017 estimate, Virginia magistrates conduct 265,000 bail hearings per year, averaging about 10 minutes per hearing.¹¹ Magistrates must complete District Court Form 327, “Checklist for Bail Determination,” and transmit it to the court before which a warrant or *capias* is returnable.¹²

I attended a number of bail hearings in Virginia’s 16th judicial district conducted by Chief Magistrate Avnel Coates and Magistrate Louis Mescara. Each hearing took about 15 minutes, while the magistrates led the arrestees through a series of questions from Form DC-327. In most of the cases an unsecured bond of a few thousand dollars was set; in two, bail was denied based on a pattern of the subject’s failing to show up for court hearings. The magistrates treated the subjects with respect and went out of their way to make sure the subjects understood the proceedings and their rights.

Major Gequetta “G.” Murray-Key, associate superintendent of the Albemarle-Charlottesville Regional Jail, and her corrections officers led me on a tour of the jail, which allows access to the magistrate’s hearing room before arrestees cross the threshold into the jail intake area and has telephones and lists of bail bondsmen adjacent to each intake desk. Jail personnel assist pre-trial detainees in understanding their rights and provide multiple opportunities to contact attorneys and bail bondsmen.

Interviews with participants in the bail system suggest that it is functioning well and that the 2021 amendments to the statute did not change much. Virginia Senator Creigh Deeds, the sponsor of the 2021 amendments, said that judges generally do a good job under existing law. “People who need to be in jail are kept in jail,” he said. Most non-serious offenders are released on their own recognizance without cash bail. The judges that he encounters in his criminal defense practice are willing to lower bond amounts if Deeds tells them the arrestee cannot afford a higher amount.

Lacey Parker, a senior public defender in Charlottesville, does not see the need for further change. Ninety-seven percent of accused misdemeanants are released on their own recognizance, she said. Very few of those released on bail fail to show up for scheduled hearings or commit other crimes while they are released on bail. Those who do violate the terms of their bond usually are apprehended quickly for other crimes or in traffic stops. James Hingeley, commonwealth’s attorney for Albemarle County, agrees and believes bail practices have helped reduce jail populations.

“Our courts are fairly conservative,” said Chief Judge William Cleaveland of the 25th Judicial District. “We look at individual cases. The magistrates do a good job, although occasionally we scratch our heads on why a magistrate released someone. We have a big problem with magistrate turnover, however.”

“I might impose a secured bond for an out-of-state defendant, but rarely for a local defendant,” said General District Court Judge Christopher Billias, of the 25th Judicial District, acknowledging that out-of-state defendants pose a greater flight risk than those who reside locally.

Bruce Williamson, a Charlottesville defense attorney, is not opposed to money bail, *per se*, but believes that the amount should be something that the defendant can afford to pay so they can secure their release pretrial, but large enough to guarantee their appearance.

One Virginia prosecutor is skeptical about bail reform. “The no-cash bail [movement] is a publicity stunt packaging among progressive prosecutors . . . [I]t really should be no-cash bail unless one’s needed, which is what we’ve always done. Most people do not put up cash anyway. They have a bondsman come up with it, so it’s not really cash in that sense.”¹³

Skepticism also exists among some in the political and public safety realms.

“Criminals accused of committing serious, violent crimes are being released right back on to the street, allowing them to commit more crimes,” Delegate Wren Williams said.

“Implementing the law requires judgment,” said Chesterfield County Sheriff Kyle Leonard. “And judgment has been lacking when magistrates put violent criminals back out on the street before my deputies can get the paperwork done for their arrests.”

Two features of the reform movement in Virginia are use of pre-trial services rather than private-sector bail bondsmen and use of statistically-based risk assessment models for determining the conditions for pretrial release.¹⁴ Virginia cities

and counties may establish pre-trial services agencies to prepare reports to guide judicial officers in deciding bail.¹⁵ Judges, prosecutors, and some defense lawyers think the pre-trial services approach is desirable, though some question whether someone not yet adjudicated guilty should be subject to the restrictions usually imposed.

Virginia can and should move in the direction of more robust data-based risk assessment, said William Ross Carew III, director of OAR Jefferson Area Community Corrections, the organization that provides pre-trial services to Charlottesville and surrounding counties. The magistrates' bail checklist is a step in the right direction, but its elements have not been statistically validated, Carew noted.

But General District Court Judge Robin J. Mayer, of the 25th Judicial District Court, does not pay much attention to the pre-trial services risk assessments presented in court. "I don't understand the algorithm," she said. "I don't think prosecutors and defense attorneys do either. It's a waste of time for the pre-trial services personnel. No one has ever told me or the other judges what it's based on."

Bail bond enterprises and their agents play an "essential" role in the bail process, Senator Deeds said. Because of them, a \$1,000 bond requirement turns into a \$100 barrier, which almost any arrestee can afford, perhaps with the help of family and friends. Jeff Clayton, executive director of the American Bail Coalition, questions denying bail based on accusation of particular crimes, in the absence of statistically valid data associating risk with those accusations. He cautions that some pre-trial supervision approaches impose onerous conditions infringing the liberty of those not convicted of anything. Some also impose significant fees on the accused. (Virginia does not.)

When they write secured bonds, bail bondsmen provide resources to make sure that the subject complies with the terms of the bond, resources that are unlikely to be available from underfunded pre-trial services agencies in Virginia. In addition, when someone skips bond, private bail recovery agents enjoy broader legal powers and simpler procedures than those applicable to regular law enforcement.¹⁶

Dave Gambale owns Freedom Bail Bonding, which has 10 locations throughout Northern Virginia and writes some 500

bonds per month. He estimates that five out of 100 will fail to appear and two out of 100 will commit serious crimes while released on bond. Having bail bondsmen with a financial incentive to ensure their appearance and good behavior is an important part of any robust system.

Virginia magistrates conduct 265,000 bail hearings per year, averaging about 10 minutes per hearing.

Gary Hitt owns Hitt Bail Bonds in Stevensburg, near Culpepper, and writes four to five bonds per week. He says that the 2021 amendments have slowed business somewhat and resulted in a lot more subjects missing court dates on unsecured bonds, which rarely happens on secured bonds.

Replacing private-sector bail bondsmen with pre-trial legal services agencies requires additional resources from the state such as mental health professionals, drug and alcohol counselors, and ankle bracelet monitors. These resources may not be available in the necessary quantities. In all six of the states that have abolished private bail bondsmen, news reports headline mushrooming backlogs of criminal cases, clogged at the pre-trial level.¹⁷

The citizens of Virginia legitimately are concerned about increased crime. Both hard data¹⁸ and experience by those involved in the bail system suggest that the incidence of failures to show for trial and new crimes by bailees is relatively modest. Concerns nevertheless exist over both kinds of failure to comply with the terms of bonds.¹⁹ Even if the percentage is not increased, releasing larger numbers means more crimes and more failures to appear.

Release on bail is only part of the equation, of course. Giving citations rather than making arrests,²⁰ prosecutors' declining to prosecute certain crimes, and responding to pressures to reduce jail populations all are tipping the balance in favor of putting more people on the street who may have a propensity to commit crimes. Making public policy according to the rhetoric from either right or left on bail reform is unwise. The principles embodied—and the Virginia statute and the basic practices pursued by Virginia magistrates—are sound. Pre-trial release should be presumed unless evaluation of specific criteria, like those set forth in the statute, suggest confinement.

Sound public policy can result only if it

is based on good data. Too many studies and reports on bail reform consider the ethnicity and income levels of detainees, without also reporting on the behavior of those released on bail. Section 19.2-134.1 requires collection of such data by the Virginia Criminal Sentencing Commission and annual reports by the commission to the General Assembly.

...Bail bondsmen provide resources to make sure that the subject complies with the terms of the bond...

The criteria for bail in § 19.2-120 and 121 should accommodate consideration of the likelihood of new crimes against property if the subject is released. De-emphasizing property crimes is inappropriate; law and order depend on being secure in one's possessions as well as in one's person. Increased trespass, shoplifting, and carjacking, adversely impact public order.

Differences in the nature of new crimes should be considered as well. Eric M. Anderson, senior public defender in Staunton, said that the concern is different when a person out on bail commits a victimless crime involving drugs, compared with acting violently toward another.

Risk assessment algorithms, including those supporting the magistrates' bail checklist, should be subject to statistical validation, and the result consolidated into one comprehensive list, applied at all levels of pre-trial bail determination.

The law cannot ensure perfection. The most it can do is to hold out models of best practice and give human decision-makers the best possible tools for doing their jobs in good faith. ☞



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Endnotes

- 1 See Isabella Jorgensen & Sandra Susan Smith, "The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States," Harvard Kennedy School, Working Paper 21-033, Dec. 2021, <https://perma.cc/4LMY-GG3S> (state-by-state analysis of specific reforms); National Conference of State Legislatures, "Pretrial Release: Guidance for Courts," 2020, <https://perma.cc/528U-C8UN>.
- 2 SB 1266, adopted in the 2021 special session of the General Assembly, amended Virginia Code § 19.2-120.
- 3 Of 22,986 defendants charged in October 2017, 81 percent were released within three days of their arrests, 47 percent were released on personal recognizance or unsecured bond, 36 percent were released on secured bond, and only 17 percent were detained. Virginia State Crime Commission, *Virginia Pre-Trial Data Project: Final Report* (September 2021), <https://perma.cc/DU22-29QL>,

- [hereinafter "2021 Crime Commission Report"].
- 4 Va. Code § 19.2-120(A).
- 5 See Virginia Magistrates' Manual at 4-6 to 4-12 (explaining how to apply the statutory factors after amendments made in 2021); *Keene v. Commonwealth*, 74 Va. App. 547, 551-552, 871 S.E.2d 239, 240-241 (2022) (affirming denial of bail; reviewing effect of 2021 amendments; finding obligation to explain application of factors satisfied).
- 6 Or, if proceed to trial on the merits, if the judicial officer has jurisdiction (as would be the case with a general district court judge).
- 7 Va. Code § 19.2-124(A).
- 8 Id., 124(B).
- 9 Confusingly, this is almost always referred to as "cash bail."
- 10 See Va. Magistrate Manual at 4-5 to 4-6 (discussing terminology).
- 11 Andy Warriner, Workgroup A: Magistrate Bail Decision and Use of Static Pretrial Risk Assessment (July 11, 2018 slide presentation) at p. 8, <https://perma.cc/3DL7-V2UK>.
- 12 Magistrate Manual of 4-6. Va. Code § 19.2-121(B) requires magistrates conducting bail hearings to complete forms provided by the Executive Secretary of the Supreme Court. A 2022 amendment requires that completed forms also be sent to the Commonwealth attorney when crimes of violence are involved (HB756, signed by the governor, April 1, 2022).
- 13 "Donald Caldwell on the failures of criminal justice reform," Roanoke Rambler, Oct. 27, 2021, <https://perma.cc/63E9-K8AS>.
- 14 "Risk Assessment," Pretrial Justice Center for Courts, <https://perma.cc/X9LP-FXWZ>. See Virginia Department of Criminal Justice Services, VPRAI Instruction Manual v 1.2 (May 15, 2009), <https://perma.cc/7EAS-855Z>.
- 15 Va. Code § 19.2-152-2 (establishment), 19.2-152.4:3 (supervision).
- 16 See *Collins v. Commonwealth*, 283 Va. 263, 269-271, 720 S.E.2d 530, 532-533 (2012) (affirming conviction of out-of-state bounty hunter for abduction; reviewing Virginia statutory law on bounty hunters); See, e.g., Va. Code § 9.1-185.15 ("Recovery of bailees; methods of capture; standards and requirements; limitations").
- 17 Margaret Barthel, "Lawsuit Alleges Prince George's County Officials Illegally Hold People in Jail Before Trial," (July 21, 2022), <https://perma.cc/VW67-3R5T>.
- 18 Of 22,986 defendants charged in October 2017, 14 percent of the released defendants failed to appear, and 24 percent of the released defendants were charged with new crimes punishable by incarceration during the period of their release. "Virginia State Crime Commission 2021 Annual Report," Virginia State Crime Commission, June 30, 2022, <https://perma.cc/CAA6-QPPR>.
- 19 See Mark Bowes, "Criminal justice reform law blamed for rise in serious offenders being released with low or no bond," *Richmond Times-Dispatch*, May 13, 2022, <https://perma.cc/7QFX-JUTS>, (quoting critics of implementation of new law in Richmond and Chesterfield County).
- 20 See Va. Code § 19.2-73 (allowing issuance of summons instead of an arrest warrant); 19.2-74 (allowing officer to issue summons instead of making arrest).

Thursday, January 5, 2023



FILED UNDER: [POLITICS](#)

Illinois counties could eliminate cash bail in 2023

Published: January 5, 2023, 1:38 pm

By *[Shannon Longworth](#) (Reporter), [Dan Reardon](#) (Editor)*

Illinois could eliminate cash bail as part of the SAFE-T Act. The Illinois Supreme Court has issued a stay on the measure until the court hears arguments on it. Under the SAFE-T Act, if an individual is arrested, a judge would decide whether the accused awaits trial in jail or not. Pretrial detention would no longer depend on whether that individual could afford to post bail. The current system has tied finances to freedom, contributing to economic disparity in the criminal justice system.

The ACLU of Illinois has supported the SAFE-T Act.

“People are stuck in jail for days, weeks, months, and sometimes even years at a time, not because of any threat to another person that they’ve been found to pose, not because they are likely to flee from prosecution, but simply because they cannot afford to pay an arbitrary amount of money that’s been the price tag that’s been set on their freedom,” Ruddell said.

Research indicates that pretrial detention detrimentally affects people. Statistically, the longer a person is in jail pretrial, the more likely they are to be rearrested later on, according to a recent [Core Correctional Solutions](#) study.

“It doesn’t take long for people to begin suffering negative consequences like job loss,” Ruddell said. “if you were arrested and held in jail, and you didn’t show up at your job the next day, you probably wouldn’t have that job for very long.”

While proponents of the change say eliminating cash bail is a solution, state attorneys from 65 counties filed a [lawsuit](#) over the legislation. A Kankakee County judge ruled parts of the law unconstitutional, so a cash bail system will remain in the counties listed on the lawsuit.

Jeffrey Clayton, the executive director of the American Bail Coalition, agreed with the perspective that eliminating cash bail is contradicts the state constitution.

“It’s a question of whether we want people to have at least the opportunity to get out or whether we’re just going to condemn people based on their future behavior and say, ‘We just think they’re too dangerous to let out,’” Clayton said.

“That’s never been really the constitutional tradition in the United States until probably the 1980s during the Reagan administration.”

According to [Article 1, Section 9 of the Illinois Constitution](#), “all persons shall be bailable by sufficient sureties,” with exceptions.

Cash bail is one kind of surety, a guarantee that the accused shows up for trial – even if only to get their bail money back. Though there are many iterations of a surety if someone doesn’t have the cash on hand. For example, with bail collateral, someone can offer their property in place of money.

“For the average person, you want the right to bail,” Clayton said. “You don’t want the state to say we just don’t like Jeff, and he’s going to jail like we don’t believe in that.”

Other critics – including [leaders in law enforcement](#) – have speculated about the correlation between bail reform and crime rates. They warn about the risk of releasing people who will become repeat offenders because a judge decides not to detain them before trial.

While crime did increase in New York since the state’s bail reform measure passed in 2019, the connection is not clear.

The [New York City Comptroller pointed out that](#) “the share of released people awaiting trial who are rearrested remained roughly the same before and after implementation of bail reforms,” according to state data.

Also, the crime spike wasn’t specific to states with bail reform. It was nationwide, during a pandemic.



Legal System. (Photo: Billion Photos/Shutterstock)

Civil Rights Corps Damaging Criminal Justice System with Meritless Lawsuits

The Civil Rights Corps and their cronies are playing a dangerous political game

By Jeff Clayton, January 6, 2023 10:44 am

Like many jurisdictions across the nation, Los Angeles County has a big problem with its bail system. Scores of defendants are being forced to wait far too long to make their case that they should have their bails lowered or be released through alternative means. Unfortunately, rather than looking for serious ways to remedy the situation, politics has reared its ugly head once again. The culprit this time is the Civil Rights Corps, which is attempting to get the results they want through a good old-fashioned lawsuit. The organization filed the class action case of *Urquidi, et al v. Los Angeles County, et al*, in Los Angeles Superior Court on November 14, 2022.

The problem is, the very premise of their suit has already been determined to be without merit after rulings in numerous court cases stretching from California to Alabama the past nearly eight years. It all began with *Varden v. City of Clanton, Alabama*, filed in 2015 by Equal Justice Under Law, a predecessor of the Civil Rights Corps.

The essence of the various lawsuits was quite simple: if a person does not make bail it is due to their being impoverished. Based on this premise, plaintiffs have claimed that there must be a right to an affordable bail, i.e., a person must always be released from custody on a bail they can actually post and never held in jail pending trial.

The nearly identical rulings of the long line of federal and state copycat cases — all brought by the Civil Rights Corps — rejected the claims on equally basic legal theory. Most recently in *Hester v. Gentry*, the U.S. Court of Appeals for the Eleventh Circuit

instead held that bail does not create discrimination against the indigent since these individuals have the ability to go to court and argue for alternatives to bail.

The California Supreme Court has also weighed-in on the Civil Rights Corps' theory. In the case of *In re: Humphrey*, it held that judges could impose bails that were beyond a defendants' means, provided the court made specific findings as to the need for it and if there were a lack of alternatives.

In late November, a mere seven days after the *Urquidi* lawsuit was filed, the California Court of Appeals for the First District ruled on the case of *In re: Kowalczyk*, which also rejected the principle of a right to an affordable bail. In its decision, it stated that the California Constitution has never "been construed as imposing an absolute requirement that bail be affordable." The *Kowalczyk* court also cited two decisions from the state's Supreme Court dating back to 1879 that clearly rejected the right to a bail that must be set in an "affordable amount."

Faced with a legal premise that cannot be won on the merits, no matter how many times they try, the Civil Rights Corps has resorted to the tactic of suing their own allies. This is precisely what they are attempting to do by suing the Police Chief of the City of Los Angeles who will report to the newly-elected mayor, Karen Bass. The organization clearly is counting on Bass' tacit support in its effort.

Bass has been an outspoken critic of bail, and as member of Congress in 2019, said, "The wealthy and the poor receive radically different treatment solely based upon their ability to post bail, which often is set at arbitrary levels well above the means of many people to pay despite the low risk they may actually post to society. I believe this is patently unfair and is un-American."

As unethical as it is clever, the Civil Rights Corps knows that Bass will not bring in the necessary parties to legitimately fight the suit against the city she represents. Because she wants them to prevail, she will undoubtedly settle the case quickly and bind Los Angeles to terms that are not consistent with established law.

In the *Urquidi* case, the Civil Rights Corps has used the same tactic by suing the office of the Sheriff of Los Angeles County. Robert Luna, who is about to be sworn-in as the new Sheriff, is an avowed criminal justice reformer and will likely align himself with the county's Board of Supervisors long held position to "end cash bail." With this case, however, everything will change if the Sheriff, on behalf of Los Angeles County and the Board of Supervisors, settles with the Civil Rights Corps.

It should be pointed out that the actual state judges who implement statutes directly, set bails that defendants cannot afford, and establish the bail schedule (which is also alleged to be unconstitutional), are not named as defendants in the *Urquidi* case. Similarly, the State Attorney General has not been offered an opportunity to defend the constitutionality of California state statute, which appears in question.

It is a blatant abuse of the system to sue allies and friends who don't have any actual authority or responsibility for the systems they purportedly oversee. The Civil Rights Corps and their cronies are playing a dangerous political game, knowing that they cannot win with their flawed and discredited legal theories. Instead, they have resorted to dirty tactics that threaten to make a mockery of the trust we place in our public officials to uphold the law and the California Constitution.

Jeff Clayton



Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.



Op-Ed: Illinois Supreme Court likely to rule state legislature acted hastily in ending cash bail

Jeffrey J. Clayton | American Bail Coalition
January 11, 2023



The Illinois Supreme Court Building in downtown Springfield, Illinois. (Alan Scott Walker | Wikimedia via [Creative Commons](#))

Two years ago, the Illinois legislature made a bold, politically-motivated move, voting to eliminate monetary bail, with implementation scheduled to take effect on Jan. 1 of this year. Well, that day finally arrived and the Illinois Supreme Court has wisely stepped in and is poised to announce what many of us already knew – that the lawmakers' actions were unconstitutional.

End cash bail! Intent on reducing the number of people held in jail pending trial, this has been the charge of criminal justice reformers in Illinois and across the nation for more than a decade. During this time, they abandoned their original strategy of using risk assessments to sort people in and out of jail following arrest. As it turned out, the foolproof algorithms they embraced were shown to be racially biased.

Instead, activists proceeded with the idea of banning cash bail as the quickest, easiest way to right a wrong. It was the equivalent of a pencil-and-eraser solution to a significant criminal justice problem: just make it go away. In the end, it was a fool's errand.

It cannot be stated more clearly. The legislature cannot simply overcome the plain meaning of the state constitution and “end cash bail.”

Despite this, Illinois lawmakers embarked on a mission to end money bail several years ago by passing the SAFE-T Act due to alleged unfairness of the bail system to those who are indigent. Gov. J.B. Pritzker, who signed the law over objections of law enforcement and prosecutors, was heavily supportive of that effort. He joined the chorus of criminal justice reformers who were able to convince state officials they should end money bail through a campaign of manipulative, emotional appeals tied to cherry-picked cases.

The effort yielded the expected headlines, which legislators coveted as praises for their righteousness. Caught up in the zealotry, some media outlets erroneously stated that Illinois was the first state to eliminate cash bail.

Ultimately, the legislature was dead-wrong in believing it could repeal the established tradition of monetary bail in Illinois – one that dated back more than 200 years – without a constitutional change.

With the exception of capital cases and those involving a life sentence, as well as very limited felony cases, the law states that all persons in Illinois shall be “bailable by sufficient sureties.” This refers to money or a thing of monetary value, according to language that appears in the state constitution, notwithstanding the questioning of doubters. This was confirmed by noted Yale law professor Daniel J. Freed, who testified before Congress that there was no doubt that “sufficient sureties” means money. In his remarks prior to the elimination of monetary bail in the federal system in 1984, Freed stated that in order to eliminate bail, that language would have to be deleted from the Federal Judiciary Act of 1789.

It is understood that "sufficient sureties clauses," such as used in Illinois, are a guarantee of the constitutional rights of a defendant. These individuals are assured of having the right to a bail amount to be set that is not excessive. They also have the right to have a surety (such as a bail agent) make that guarantee, unless a prosecutor invokes a limited exception and the court denies bail.

In sharp contrast to Illinois stands the federal system of preventative detention, in which there is no right to bail and the U.S. government detains 75 percent of all defendants charged with a crime. Most states, including Illinois, have a detention rate of less than 20 percent.

In its seminal opinion on the rulings of the vast majority of state supreme courts, the state of Washington's Supreme Court stated, “As a matter of plain language, ‘bailable by sufficient sureties’ means a defendant must have the option to utilize a surety in making bail.” Accordingly, while Illinois' SAFE-T Act purports to protect defendants, it actually denies them of their rights in a great number of cases, far beyond what the U.S. Constitution allows.

Looking at it from a different perspective, Illinois has the right to insist on sufficient sureties from defendants. This means it is permitted to require a higher bail amount than a defendant (or their surety) is able to post, provided it is necessary to protect public safety and guarantee their appearance. The law pertaining to this dates back to when Illinois was still a territory. It is fairly basic on this point and is consistent with the rest of the nation. Specifically, when a bail is imposed (and is not “excessive” and

deemed “sufficient”) and is not posted, a defendant remains in jail. That is just how it works.

The Illinois legislature does not have the authority to simply circumvent the state constitution and “end cash bail.” In modern times, New Jersey is the only other state that has attempted to eliminate bail and move to the federal system of preventative detention. Then-governor Chris Christie set out on this mission in 2014, only to run into nearly identical language pertaining to bail in New Jersey’s constitution. Along with legislative legal counsel, Christie quickly realized that Daniel Freed was right – bail by sufficient sureties means the right to money bail. In order to end the cash bail system, the state constitution must be amended. The Illinois legislature surely knew this, but brazenly chose to ignore the foundation of state law.

Gov. Pritzker and state lawmakers seem to have conveniently forgotten one other key detail concerning the elimination of monetary bail: it must be replaced with something else that costs a lot of money. That something else is a system of pretrial supervision and preventative detention that will require due process hearings. New Jersey has spent approximately half a billion dollars over the past six years to get its system operational and to pay for recurring costs – so far.

Fortunately, more than 60 state attorneys challenged the constitutionality of Illinois’ SAFE-T Act. The subsequent ruling of a Kankakee County judge has now set the stage for the state Supreme Court to determine the fate of monetary bail, which has operated since the Northwest Ordinance of 1787. The legislature thought it could simply erase the personal surety system like pencil scratches on a page rather than regard it as black-letter constitutional precepts. Despite the fervor for reform, it is highly unlikely that the Illinois Supreme Court will allow the provisions of this ill-conceived law to stand.

Jeffrey J. Clayton is executive director of the American Bail Coalition



TOP STORY EDITOR'S PICK

Illinois responds to state's attorneys attempt to throw out provision to end cash bail

By Kevin Bessler | The Center Square
Feb 27, 2023



Illinois Attorney General Kwame Raoul
Courtesy of BlueRoomStream

(The Center Square) – Saying the plaintiffs’ “grab-bag of constitutional theories” should be rejected, the state of Illinois has responded to a lawsuit challenging the constitutionality of ending cash bail.

Dozens of state's attorneys from around Illinois joined together to file a lawsuit to have the provision thrown out, stating that the Illinois Constitution requires the state to maintain a system of monetary bail, because that system is mandated by the bail clause, the crime victims' rights clause, and the separation-of-powers clause.

A Kankakee County circuit court's ruling initially affected 64 counties where state's attorneys filed lawsuits to prevent the law from going into effect. Just before the law was to go into effect Jan. 1, the Illinois Supreme Court ordered a hold on the cashless bail portion of the SAFE-T Act from going into effect statewide.

In a **brief** filed Monday, the office of Illinois Attorney General Kwame Raoul stated that the "plaintiffs' response brief identifies no persuasive reason to affirm the circuit court's sweeping decision striking down the pretrial release provisions."

They go on to note that the court reasoned that three separate provisions of the Illinois Constitution independently require the state to maintain a system of monetary bail, and that only courts, not the Illinois General Assembly, can regulate the conditions under which criminal defendants may be detained pending trial.

"Those unprecedented holdings are incorrect, and would effectively bar the General Assembly from ever reforming pretrial procedures in the State," the brief said.

Jeffrey Clayton, executive director of the organization American Bail Coalition, agrees with state's attorneys, who argue that an outright ban on bail is unlawful without a change in the state constitution. He points to existing language that states that all persons in Illinois shall be "bailable by sufficient sureties." This refers to money or a thing of monetary value and is a guarantee of the constitutional rights of a defendant, the group argues.

Clayton said he doesn't understand why some in Illinois are revisiting the ending of cash bail.

"I don't and that's why this is a confusing move because they did it several years ago when the New Jersey question was in vogue and obviously the results didn't pan out and the alternatives to money bail seem to make the problem worse," Clayton told The Center Square.

Clayton adds that getting rid of cash bail would mean it must be replaced by something else, such as preventative detention, along with a system of pretrial supervision and due process hearings, but notes that the costs to implement and operate such a system would be astronomical.

The Illinois Supreme Court is scheduled to hear the case March 14.



Kevin Bessler

Staff Reporter

Kevin Bessler reports on statewide issues in Illinois for the Center Square. He has over 30 years of experience in radio news reporting throughout the Midwest.

[Criminal Justice](#)

Five things to know as the Safe-T Act goes to the Illinois Supreme Court

On March 14, the Illinois Supreme Court will hear oral arguments that will determine the future of cash bail in the state.

By [Shannon Heffernan](#)

March 12, 2023



Gov. JB Pritzker signs the criminal justice reform bill into law at Chicago State University in February of 2021 as sponsors and supporters look on. Ashlee Rezin / Chicago Sun-Times

The future of cash bail in Illinois is in the hands of the state's Supreme Court.

Illinois passed a law that [eliminated the use of cash bail](#) starting on January 1, 2023 as part of the [SAFE-T Act](#). Under the law judges could no longer require people to pay money in order to leave jail while they await trial. Instead, judges could only keep a person behind bars pretrial if they meet criteria that shows they are likely to flee or pose a safety risk.

But prosecutors across the [state filed lawsuits](#) challenging the law's constitutionality. After a lower court judge ruled in their favor, it was placed on hold until the Illinois Supreme Court could make a final decision. Here are five things to know before oral arguments in front of the Illinois Supreme Court on March 14.

1. A key question for justices is what the word “bail” actually means.

The Illinois constitution promises the right to bail to everyone, except people charged with certain offenses.

The state's attorneys who are trying to overturn portions of the Safe-T act argue that when the constitution says people “shall be bailable by sufficient sureties”—that includes cash bail. So lawmakers can't get rid of monetary bail without going through the difficult and cumbersome process of changing the constitution first.

But defenders of the SAFE-T Act say that definition of bail is wrong. In court filings they argue the language in the constitution simply means defendants have the right to freedom while they await their trial. They argue “bail” can be non-monetary and include other conditions that would make sure a person returns to court, for example, electronic monitoring.

2. Victim rights groups and criminal justice advocates say eliminating cash bail will make communities safer. A police group argues the opposite.

A coalition of 426 organizations and individuals filed a document with the Illinois Supreme Court arguing that the elimination of cash bail will make communities safer. That coalition includes victim rights groups like the Illinois Coalition Against Domestic Violence. They point to studies that show when reliance on cash bail was reduced in Cook County, there was [no statistical effect on crime](#).

They write that when people are unable to pay bail, they “often lose their jobs, housing, health care, family and social ties, and potentially custody of their children.” And when people's lives are destabilized, that makes communities less safe.

The Fraternal Order of Police Lodge 7, which represents over 11,500 sworn Chicago Police Officers, also filed a document with the court. They said eliminating cash bail would have a “drastic adverse impact on the work and safety of its members, their families, the community they serve, and the work of all law enforcement officers across Illinois.”

They say “less detention results in more crime, including violent crime.”

3. Arguments come in the midst of a mayoral election in Chicago, where public safety is front and center.

Chicago continues to face the stubborn problem of gun violence and Chicago voters say they're [most concerned about](#) crime and public safety. Both candidates in the mayoral runoff, Paul Vallas and Brandon Johnson, have highlighted the issue of cash bail in Illinois.

Johnson is a proponent of the SAFE-T act, which he says will “have a tremendous impact on people who languish in our criminal justice system simply because they cannot afford to pay bail.”

Vallas, on the other hand, has said [ending cash bail](#) will make things worse. He's raised concerns that the SAFE-T Act will allow people charged with violent crimes or previous convictions back on the streets.

There is not a timeline for when the case will be decided.

4. The lower court judge who ruled against the SAFE-T ACT was Republican, but the Illinois Supreme Court is majority Democrat.

Kankakee Judge Thomas Cunningham is a Republican. But five of the seven Illinois Supreme Court judges were elected as Democrats.

Democrats pushed the SAFE-T act through the legislature and Democratic judges could be more friendly to arguments that protect the new law.

But the debate over cash bail doesn't break entirely along party lines. For example, some of the state's attorneys who sued over the law are Democrats. And the court has four justices that are new, so don't have a long record of Supreme Court decisions to analyze.

5. One of the key arguments is about the separation of powers.

As you may remember from middle school social studies, each branch of government (judicial, executive, and legislative) has a distinct job with its own powers and responsibilities.

Critics of the SAFE-T Act say the law blurs those boundaries, because the legislative branch is telling judges what to do. But defenders of the law say that is wrongheaded. They argue lawmakers have authority to regulate how the court operates. For example, lawmakers have set mandatory minimums, which shape how judges can sentence a person.

Shannon Heffernan covers criminal justice for WBEZ. Follow @shannon_h.

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Tuesday, March 14, 2023

CITYWIDE

Fight Over Ending Cash Bail Will Take Center Stage At State Supreme Court Tuesday

The drawn-out legal battle over cash bail has reached what could be its final room.
Mack Liederman



Credit: Maxwell Evans/Block Club Chicago

Mallory Littlejohn, legal director for the Chicago Alliance Against Sexual Exploitation, speaks during a press conference in support of the Pretrial Fairness Act outside the Cook County Courthouse Sept. 15.

CHICAGO — A law that would end cash bail throughout Illinois is headed to the state's Supreme Court Tuesday.

As part of the pretrial release provision of the SAFE-T Act, Illinois was set to eliminate the use of cash bail at the start of the year — only to have [the change put on pause in the final hours](#) as sheriffs and prosecutors across the state floated legal challenges.

A downstate judge in late December sided with arguments that lawmakers interfered with the judiciary process by eliminating cash bail. State Attorney General Kwame Raoul [filed an appeal](#). The case is now at the state's Supreme Court.

Proponents of ending cash bail say the measure is necessary to erase discriminatory practices that keep a disproportionate number of lower-income people locked up while awaiting trial.

The act would also make it harder for those charged with violent crimes — who might normally be able to post bail and get released — to get back on the street, supporters say.

[Despite widespread misinformation on social media](#), the SAFE-T Act does not mean jails would empty out or judges would lose their authority to detain someone they believe is a danger to the public or a flight risk. It removes cash bail as a standard in pre-trial procedures.

Instead of a judge assigning bail, the law would trigger rigorous detention hearings that involve a judge deciding whether a defendant should be detained before trial, supporters said.

Victim rights groups and criminal justice advocates have rallied around the change.



Credit: Colin Boyle/Block Club Chicago Illinois Attorney General Kwame Raoul speaks on March 12, 2020.

Gov. JB Pritzker, who passed the SAFE-T Act before the legal challenges, told reporters in January there is a “common and comfortable belief that this is constitutional.”

“I’m disappointed there is a delay in the implementation,” Pritzker said in January. “Someone who’s wealthier shouldn’t just be able to buy their way out of jail when they commit a violent crime.”

Jeffrey Clayton, executive director of the American Bail Coalition, said it’s a “fundamental right” to have “a number set for you to get out of jail.” Bail agents, law enforcement and prosecutors have been vocal critics of a cash bail abolishment.

“If we don’t have bail, we have a bureaucratic state that may or may not release somebody,” Clayton said.

As crime takes center stage in the city’s mayoral debate, candidate Paul Vallas has voiced similar concerns about eliminating cash bail, while Brandon Johnson has supported the SAFE-T Act, saying people “languish in our criminal justice system simply because they cannot afford to pay bail,” [according to the WBEZ Chicago](#).

New Jersey [mostly scrapped cash bail](#) in 2017, acknowledging its court system had long discriminated against the poor.



TOP STORY EDITOR'S PICK

No-cash bail 'more fair,' Pritzker says; opponents worry recidivism would increase

By Greg Bishop | The Center Square

March 15, 2023



Illinois Gov. J.B. Pritzker in Normal Tuesday
GovPritzker Facebook

(The Center Square) – It's now up to the Illinois Supreme Court to decide what to do about ending Illinois' cash-bail system.

The law ending cash bail statewide was initially passed with the SAFE-T Act in early 2021. Lawmakers have amended the law several times, including last fall when the Democratic majority **modified** it to allow denial of pretrial release for a slew of serious crimes, ranging from murder to kidnapping and more.

State's attorneys from across the state weren't swayed by the changes. They continued their litigation against the law and secured a **ruling** out of Kankakee County against implementing no-cash bail for more than 60 counties. On New Year's Eve, the day before the law was to go into effect, the Illinois Supreme Court **suspended** the measure pending an appeal from the Pritzker administration, legislative leaders and the Illinois Attorney General.



Kankakee County State's Attorney Jim Rowe answers questions from Illinois Supreme Court Chief Justice Mary Jane Theis Tuesday in Springfield
BlueRoomStream

During oral **arguments** in front of the Illinois Supreme Court Tuesday, Kankakee County State's Attorney Jim Rowe raised concern that sheriffs will have to double the number of instances of deputy contacts with potentially dangerous criminals.

“Fascinating to listen to both sides,” Gov. J.B. Pritzker said in Normal Tuesday afternoon.

If the no-cash bail law he signed is restored, Pritzker insists violent criminals will remain behind bars at the judge’s discretion.

“It’s a more fair system than to have some people sitting in jail for days, weeks or months when they just don’t happen to have the few hundred dollars, or couple of thousand dollars, again when they’ve committed a nonviolent crime, to be let out,” Pritzker said.



Illinois Gov. J.B. Pritzker in Normal Tuesday answering questions about the challenge to ending cash bail
GovPritzker Facebook

Jeff Clayton with the American Bail Coalition said judges already have the ability to set lower bail for individuals of lesser means. Ending cash bail, he said, will reward offenders who fail to appear in court or have a lengthy criminal record of doing so in the past.

“Are first-timers who can’t afford bail stuck in jail, generally not, and I think Illinois being a progressive state, we’ve already seen that, that those people just don’t exist, and that’s exactly what we saw in New York,” Clayton told WMAY. “Laws like this benefit recidivist defendants.”

Pritzker said bail isn't a deterrent, and remained confident his side will prevail.

"It's clear to me that there's one side has the much better argument on the SAFE-T Act and I think that will prevail," Pritzker said.

Pritzker recently downplayed concerns raised over his million-dollar donation to two then-supreme court justice candidates now on the bench of seven. Such a perceived conflict is enough to taint the possible outcome, Judicial Integrity Project's Chris Forsyth **said**.

"And if the public perceived that there is an impropriety, then there is an impropriety and it should be rectified," Forsyth told The Center Square.

Pritzker had previously **said** it's "ridiculous" to suggest the justices recuse themselves on controversial issues involving him as the governor and as the lead defendant.

A ruling on no-cash bail isn't expected for weeks.



Greg Bishop

Associate Editor

Greg Bishop reports on Illinois government and other issues for The Center Square. Bishop has years of award-winning broadcast experience and hosts the WMAY Morning Newsfeed out of Springfield.

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Bailed out, arrested again: These charities boomed after the murder of George Floyd. They're under fire for bailing out violent offenders

By [Rob Kuznia](#) and Yahya Abou-Ghazala, CNN

Published 8:07 AM EDT, Tue March 21, 2023

CNN — In late August of 2021, Minneapolis police responded to a shooting along I-94, where they found a BMW sedan that had crashed into a freeway median. Slumped behind the steering wheel was 38-year-old Luis Damian Martinez Ortiz, who'd suffered a fatal gunshot wound to the chest.

After reviewing surveillance footage, police arrested George Howard, then 47, who'd gotten into an alleged road-rage altercation with Ortiz on a freeway onramp, according to court documents. Howard, whose trial is slated for April, stands accused of second-degree murder; his attorney says he was acting in self-defense.

Days after his arrest, local crime bloggers and rightwing media pounced on a discovery. Three weeks prior to the shooting, Howard — who had a lengthy rap sheet and a history of violence — had been bailed out of jail while awaiting trial on a misdemeanor domestic-assault charge.

The woman he allegedly assaulted had secretly called 911 during that incident and was heard by a dispatcher saying, "I don't want to die," according to a case report obtained by CNN.

The party that put up the \$1,500 in cash to release Howard is a progressive organization called the Minnesota Freedom Fund.

“Ya picked another winner, MFF, bravo,” [tweeted](#) CrimeWatchMpls, a widely followed local crime blog – and a frequent critic of the nonprofit – above the court document it had dug up and mugshot of Howard. “Thanks so much.”

The Minnesota Freedom Fund is among more than 100 charitable bail groups in the United States. Together, they represent a segment of the bail ecosystem that mostly flew under the public’s radar until the May 2020 police murder of George Floyd in Minneapolis.

Most raise money through crowdsourcing or other methods of fundraising and post bail for low-income defendants as part of a larger effort to abolish the cash-bail system, which many of the nonprofits view as a predator of the poor – and in particular of Black, brown and Indigenous communities.

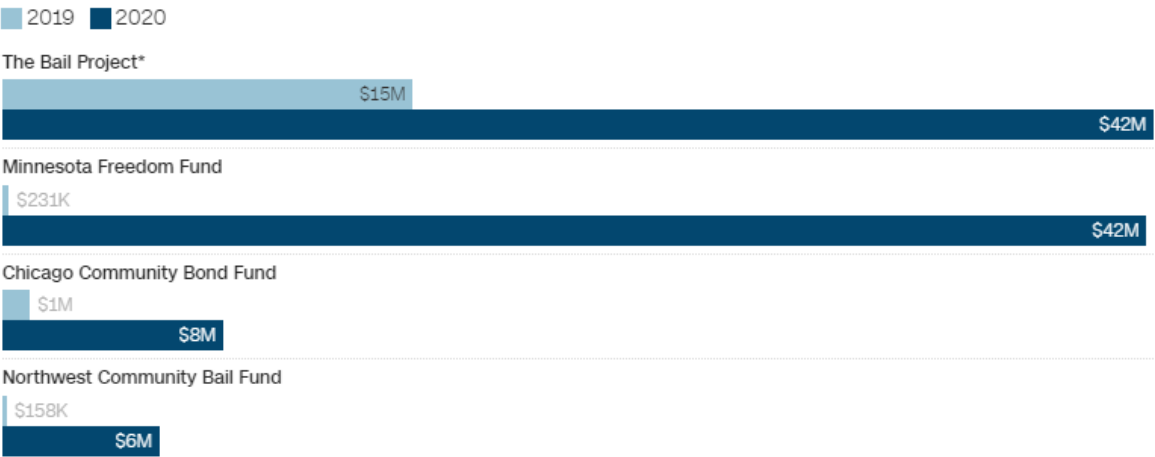
Floyd’s death left many Americans eager to do their part to counter inequities in the criminal justice system. Celebrities such as Justin Timberlake, Seth Rogen and [Vice President Kamala Harris](#) touted the Minnesota Freedom Fund and other bail charities on Twitter. Donations poured in. Many charities experienced a surge, but none as jarring as the one that jolted the Minnesota Freedom Fund. In all of 2019, it raised about \$231,000; in 2020, the charity took in a whopping \$41.6 million. The deluge of donations was so huge it crashed the organization’s PayPal account.

“It was getting kind of scary,” Mirella Ceja-Orozco, co-executive director of the Minnesota Freedom Fund, told CNN. “None of us had ever seen this kind of money.”

After George Floyd's death, donations to bail charities skyrocketed

The Minnesota Freedom Fund's annual revenue ballooned by nearly 18,000%.

Total revenue in 2019 and 2020



*The Bail Project files taxes by fiscal year, so the data shown compares revenue earned between July 2018 and June 2019, to July 2019 and June 2020. All other organizations on this chart file taxes by calendar year.

Source: IRS Form 990 for each organization
Graphic: Annette Choi, CNN

The Minnesota Freedom Fund wasn’t the only charity to experience an influx of cash in 2020. The Los Angeles-based Bail Project – which operates in nearly two dozen cities nationwide – saw its annual contributions that fiscal year nearly triple to about \$42 million. The Chicago Community Bond Fund’s annual revenues skyrocketed from about \$1 million to nearly \$8 million by the end of 2020. In the Seattle area, the Northwest Community Bail Fund’s annual take-in blew up from a mere \$158,000 to about \$5.7 million.

Almost overnight, charitable bail groups had become hefty contributors to a fast-snowballing movement to reform the cash-bail system. The momentum kept building

after Floyd's death, with Joe Biden's presidential campaign [calling](#) for the end of cash bail and Illinois Gov. J.B. Pritzker signing a landmark bill making his state the first in the nation to completely abolish it. (The bill was poised to go into effect in January, but was put on hold on New Year's Eve due to [a flurry of litigation](#).)

At the height of the unrest over Floyd's death – with demonstrators getting arrested by the hundreds in major cities – many bail charities advertised themselves as a mechanism by which to release protesters held in jail.

But since then, in no small part because they've had such a windfall at their disposal, some bail charities have started taking on more hardcore cases. The nonprofit groups argue that their work is no different from that of commercial bail bondsmen.



Cincinnati police officers arrest protesters after curfew in June 2020. The protests were in response to the death of George Floyd in Minneapolis.
Meg Vogel/USA Today Network

Still, not all states treat them as equal. New York, for instance, bars charitable bail groups – and not their licensed commercial counterparts – from bailing out defendants accused of felonies.

In Minneapolis's Hennepin County, which along with the rest of the state is served by the Minnesota Freedom Fund, CNN discovered at least 65 defendants who were bailed out by the charity after Floyd's killing while awaiting trial on felony charges involving violence, physical threats or sex crimes. All were convicted.

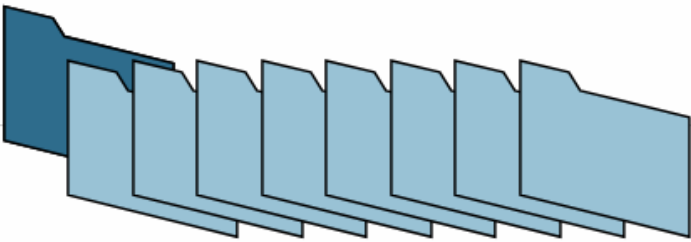
According to court documents, they included a woman who fatally stabbed a man for refusing to have sex with her; a convicted felon who shot a man twice in the abdomen in a strip-mall parking lot (the victim survived); a man with a history of violent felony convictions who assaulted a woman with a butcher knife and beer bottle, leaving her with a broken jaw and collarbone; and a man with five prior felonies who stomped on the head of a tourist, causing what paramedics said was a broken jaw, profuse bleeding and a possible concussion.

In Indiana, over the three years ending in December of 2021, 24% of the roughly 1,000 defendants cut loose by The Bail Project – among the largest charitable bail groups in the United States – had been charged with a crime of violence; 35% were facing felony charges and had a previous charge of at least one crime of violence, according to figures shared by the organization in a lawsuit.

CNN also found dozens of cases across the country after Floyd's death in which defendants bailed out by charities were later arrested again for alleged acts of violent crime, including robbery, assault, kidnapping and attempted murder. In at least nine cases, a beneficiary of a bail charity has, after their release from jail, been subsequently arrested on murder charges.

Nine murder charges

Defendants who were bailed out by a charity and later arrested on murder charges:



DEFENDANT Michael DeWitt		
LOCATION Louisville, Kentucky		
ORIGINAL CHARGE 2/16/2021: Public intoxication, receiving stolen property, resisting arrest, assaulting a police officer, obscuring identity of a machine, disorderly conduct, criminal trespass.		
BAILED OUT BY The Bail Project	DATE 2/24/2021	AMOUNT \$5,000
MOST RECENT CHARGE 4/22/2021: Murder; carjacking resulting in death.		
STATUS A hearing for the state murder charge is scheduled for May.		
SUMMARY Michael DeWitt was arrested on February 16, 2021, on suspicion of public intoxication from controlled substances, receiving a stolen vehicle, and assaulting a police officer among other charges. A police report said officers responded to a disorderly person call		

PREVIOUS

NEXT

Seizing on rising crime rates in the months after Floyd’s death, Republicans in Minnesota, Kentucky, Pennsylvania, Washington state and Indiana took aim at bail charities with bills seeking to quash or hamper their ability to operate.

The Indiana bill was consequential: It became law in July. The new statute, among other things, prohibits bail charities – but not commercial bail-bond companies or private citizens – from bailing out defendants accused of crimes of violence or who are charged with a felony and have a violent crime conviction on their record.

The leaders of The Bail Project – which [stopped](#) posting bail in Indiana after the new law took effect – say they feel singled out and the organization has teamed with the ACLU in filing a federal lawsuit against the state. A judge denied The Bail Project’s request for a preliminary injunction, but a final ruling is pending.

The state of Indiana’s response to the suit sums up the primary complaints of bail-charity critics: In this post-George Floyd era, the nonprofit groups have thrown themselves into the gears of the American criminal justice system like a wrench, undermining structural incentives for getting defendants to show up for court while occasionally releasing dangerous criminals back into the streets – all with minimal transparency and oversight.

A CNN review found that the new Indiana law – if applied nationally – likely would have prohibited charities from releasing at least five of the nine defendants who were later arrested on murder charges.

But sometimes, the circumstances surrounding allegations of serious crimes can be murky. That was the case for Trey Dozier of Chicago, who says that were it not for The Bail Project coming to his rescue during his darkest hour, his life would be ruined.

The ‘scary exception’

Dozier, now 36, lost his job as a claims manager for a moving company and with it his health insurance in 2020, forcing him to ration his insulin. As he and The Bail Project tell the story, one day in August of that year, Dozier fell into a diabetic coma and went missing due to “diabetic dementia.” While wandering about in a daze, Dozier allegedly opened the passenger door of an occupied car and demanded the occupants get out; they called the police. He was arrested and charged with felony carjacking.

A judge set Dozier’s bail at \$100,000; to get out he would need to pay a \$10,000 deposit. Dozier and his partner not only lacked the money, they were way behind on rent.



Trey Dozier and his partner Christin Tauriainen.
Courtesy The Bail Project

“I was working at Target at the time, so I was really going to work every day and coming home and thinking, ‘Is this the day when all of our stuff is going to be on the street?’” Dozier’s partner, Christin Tauriainen, told CNN.

Tauriainen shared Dozier’s plight on [TikTok](#); employees at The Bail Project saw it and the organization agreed to cover Dozier’s bail. He was released in late 2020 after having been in jail for three months. His next court hearing is on April 3.

“If it were not for The Bail Project, the things that they did, I cannot – I really, truly can’t tell you,” Dozier told CNN, adding that he now has a better job than the one he lost. “It was us falling without a parachute, and somebody showing up basically right on time.”

Bail charity operators say it is stories like Dozier’s – rather than the more sensational ones about defendants who commit grave crimes after their release – that typify their clientele.

“We see articles all the time about the exception – the scary exception,” said Robin Steinberg, the founder and CEO of The Bail Project. “What you never see are stories that talk about the millions of people, literally, that come out of jail every year in the pretrial context and go back to their families, continue to thrive, fight their cases from a position of freedom, feed their children, do their jobs, finish their cases, and move on with their lives. That’s never a headline.”

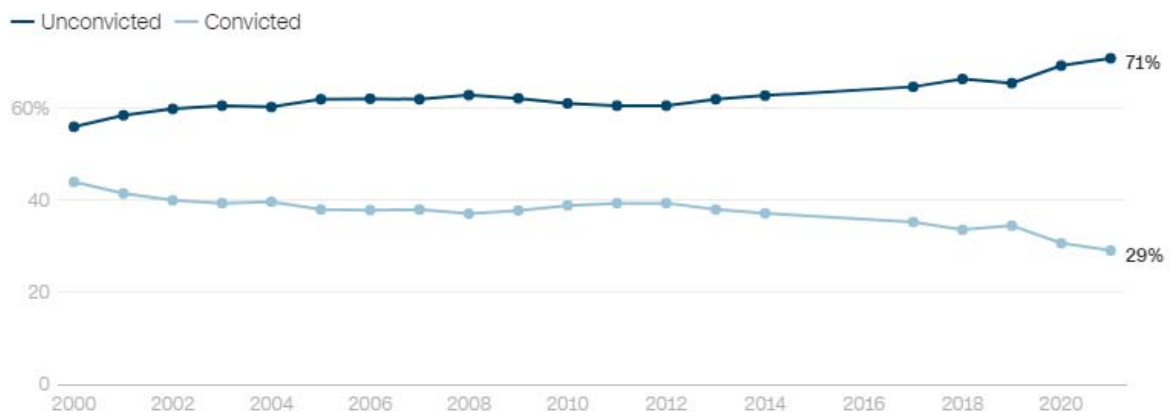
Nationwide, some 70% of the 636,000 inmates in local jails have not been convicted of the crime for which they are accused, according to a recent [Bureau of Justice Statistics report](#), citing data from 2021. That means most people in jail are there awaiting trial because they can’t afford cash bail, say advocates of bail reform. Black

people make up roughly 35% of all jail inmates, which is more than twice their share of the general population.

7 in 10 inmates wait in jail without a conviction

Over the last two decades, the percent of jail inmates who were unconvicted grew from 56% to 71%. The growing number of unconvicted inmates is driving the rise of the overall jail population since 2000, according to the Bureau of Justice Statistics.

Percentage of inmates in local jails, by whether or not they had been convicted of a crime



Note: Data for 2015 and 2016 are not included because data for those years were as of the end of the year. Datapoints for all other years are as of June. Typically there are more inmates in jails midyear than at year end, therefore, the metrics are not comparable. Numbers may not sum to 100 due to rounding.

Source: Bureau of Justice Statistics
Graphic: Annette Choi, CNN

Bail charity advocates note that wealthy defendants who are granted bail can almost always enjoy freedom until their trial (think Harvey Weinstein or murderer Robert Durst, who paid \$250,000 and then skipped his court hearing) while indigent ones stuck behind bars are often pressured to plead guilty just to get out of jail. The Minnesota Freedom Fund says about a third of the defendants it bails out ultimately have their cases entirely dropped.

A double standard?

Charitable bail groups feel unfairly under siege, and often point out that judges – not charities – determine whether a defendant is eligible for bail and then how much it should be.

In theory, judges are prohibited by the US Constitution from setting bail that is excessive. In practice, there are judges who purposefully assign steep bail amounts as a way of keeping people in jail, said Joceyln Simonson, a professor and associate dean at Brooklyn Law School. Simonson said bail charities act as a corrective for that and other flaws in the criminal justice system.

“I think the story of community bail funds is one about groups of people getting together to bail out strangers,” she said. “It’s kind of a mind-blowing thing to be doing based on some broader idea that money bail is not just.”

In what is often renounced by bail charities as a double standard, their critics tend to give a pass to commercial bail-bond companies, which do not shy away from de-jailing people accused of violence – some of whom later get arrested again in connection with [heinous crimes](#).

“Bail reform and charitable bail funds are an easy scapegoat,” Camilo Ramirez, the chief strategy officer at The Bail Project, told CNN. “All this focus on organizations that help low-income people for free ... versus an industry that profits \$2 billion a year from the two-tier system of justice that bail creates.”



Bail bond signs in Tulsa, Oklahoma.
Michael Noble Jr. for CNN

Kellen Funk, an associate professor of law at Columbia Law School, said he believes it's "mostly right" that bail charities are often unfairly singled out, noting that they and commercial bail-bond companies serve many of the same basic functions.

And yet, he said, bail-bondsmen often seek defendants facing the most serious charges.

"That's the whole point, right?" Funk said. "That's where they make the most money."

Bail charities have a natural enemy in the for-profit bail industry, whose business model is undercut by the crowd-funded organizations.

Jeffrey Clayton, the executive director of the American Bail Coalition, a trade association of insurance companies who underwrite criminal bail bondsman in the United States, has worked on bills that attempt to rein in bail charities all over the country. He believes bail charities should be confined to certain kinds of offenses.

"They should stick to, you know, cases where typically we see problems with indigent parties getting ensnared in the system," he said. "And that's those low-level misdemeanor cases."

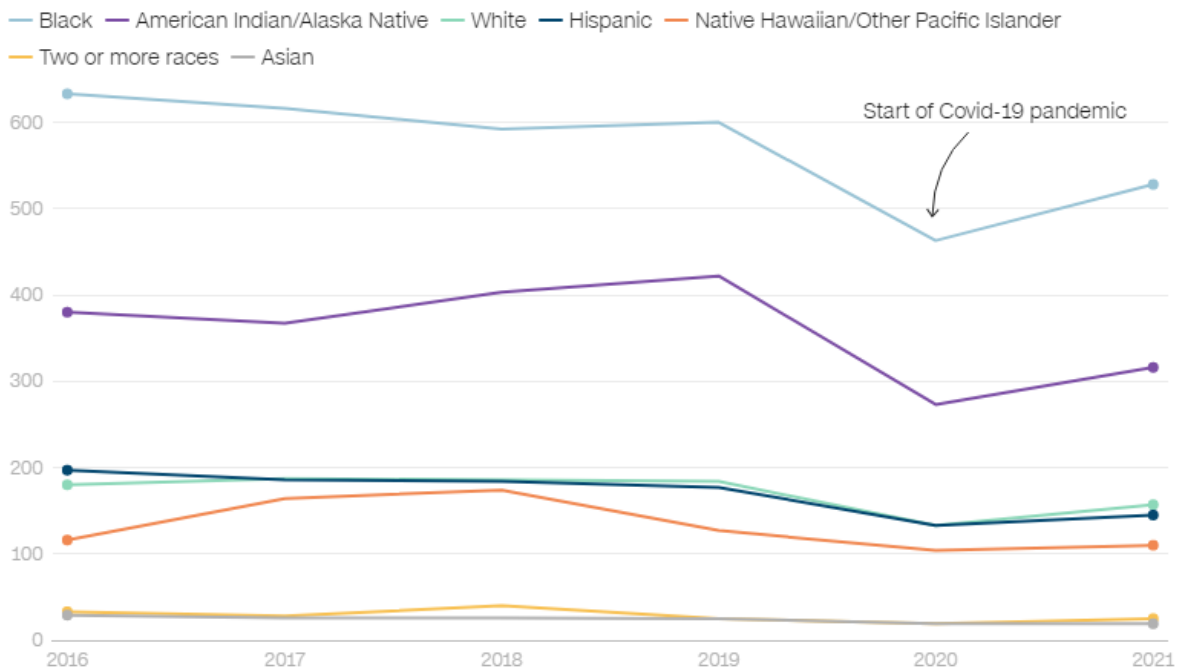
It's easy to understand why the bail industry views charitable bail groups as a threat. Most are unapologetic about their ultimate aim: to dismantle the cash-bail system in its entirety. The Minnesota Freedom Fund even launched a new political offshoot dedicated to that cause.

The National Bail Fund Network, a collaborative partnership including about 60 pre-trial bail charities across the country, takes it even further, listing as one of its main tenets the abolition of the "prison industrial complex."

The jail incarceration rate for Black Americans is more than 3 times higher than for White Americans

Black residents consistently record the highest jail incarceration rates.

Number of confined inmates per 100,000 residents at midyear, by race and ethnicity



Source: Bureau of Justice Statistics
Graphic: Annette Choi, CNN

This kind of bold positioning not only sets the stage for confrontation with the bail industry, it has recently proven [vulnerable](#) to attack from the [political right](#) amid fears over high rates of violent crime nationwide. However, even though efforts to roll back bail reforms are under way in several states, experts say clear evidence linking bail reform to crime increases is lacking.

Among GOP lawmakers who have taken guidance from the American Bail Coalition is Peggy Mayfield, the state representative who authored the successful Indiana bill, which puts charitable bail groups under state oversight.

Mayfield says the cash-bail system is fundamentally different from what bail charities do.

“A bail agent can go get the defendant and haul him back to jail,” Mayfield said. “You know it commonly as a bounty hunter. Charitable bail has no authority to make that person go to court.”

What’s more, cash-bail supporters say, baked into the system is an incentive for getting defendants to show up for court. Cash bail advocates often refer to this as having “skin in the game” or collateral.

Simply put, freedom for the defendant is “purchased,” usually by paying for a nonrefundable portion of their bail – typically 10% – to a commercial bail-bond company. If the defendant fails to show up, they or their family are on the hook for the rest. (People can also pay bail in full themselves; the money is returned if and when the defendant shows up for court.)

Because bail charities amount to a benevolent stranger – or a crowdsourced collective of benevolent strangers – who covers the full bail for defendants with no strings attached, the argument goes, they subvert the incentive.

“If you run, so what?” said Joe Tamburino, a defense attorney in Minneapolis and a supporter of the cash-bail system. “It’s not your money or your mom’s money being lost.”



Tanner DeLapp, of The Bail Project, picks up cash on March 9 to bail out three clients in Tulsa, Oklahoma.
Michael Noble Jr. for CNN

Charitable bail groups do have an incentive as an organization to ensure their clients show up for the court hearings: When that happens, the nonprofit organizations are typically reimbursed by the courts for the bail they paid. (For this reason, they often refer to their pot of revenue as a “revolving fund.”)

If there is general agreement on one thing, it’s that the entire purpose of bail is to incentivize defendants to show up for court, not detain people who are, constitutionally speaking, innocent until proven guilty.

Skin in the game

Still, a key question remains: Will defendants actually be less inclined to appear in court if their bail is covered by a philanthropic group?

To address it, CNN focused on three bail charities – The Bail Project, the Minnesota Freedom Fund and the Northwest Community Bail Fund in Seattle – because all grew substantially after Floyd’s death and all have come under fire for having bailed out people who were later arrested again on suspicion of murder.

The Bail Project, which was founded in 2017, often cites its evidence-based approach to bail-reform advocacy.

By the charity’s count, its nearly 29,000 clients have made more than 90% of their court hearings. Steinberg, the CEO, says that that high rate alone is reason enough to abolish cash bail.

“There’s some intuitive sense to the idea that putting skin in the game makes people come back to court,” Steinberg told CNN. “But it turns out that that was a myth, and that in some ways, the entire cash bail system was built upon a myth.”

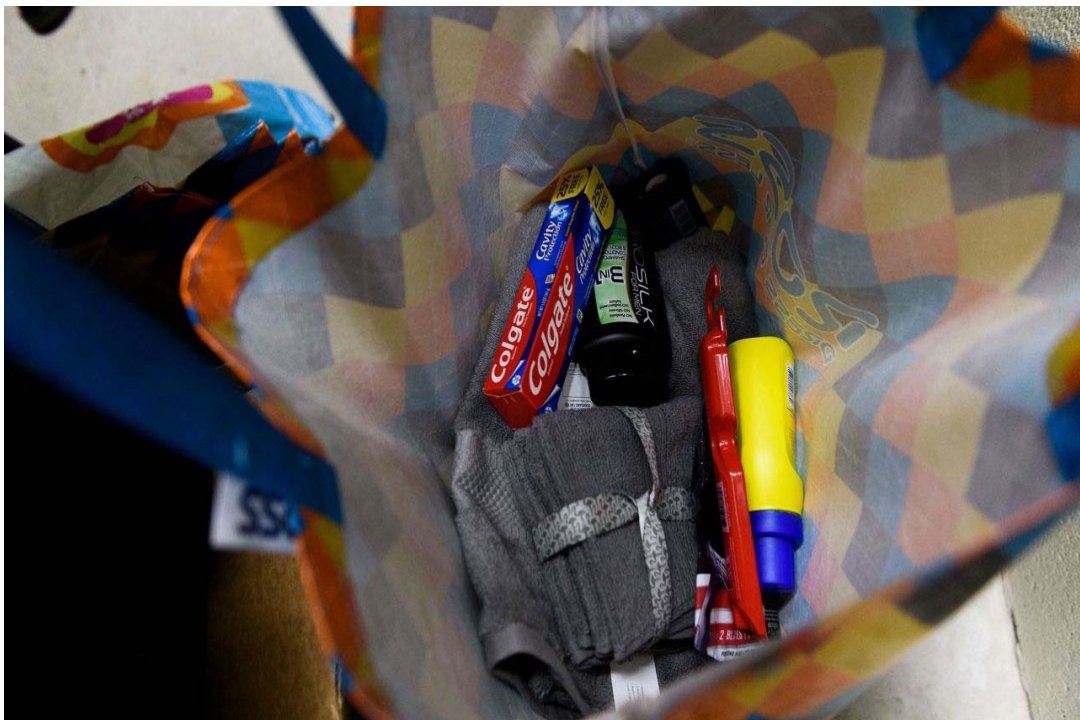
The Bail Project declined to share its raw data with CNN, citing an internal policy against releasing information about its clients.

But a recent study commissioned by Los Angeles County compiled statistics showing that The Bail Project’s failure-to-appear rate – at 21% – was notably below that of the larger population of defendants released before their trial in Los Angeles County; about a third of them missed court. The Bail Project’s re-arrest rates were also markedly lower.

Leaders at The Bail Project attribute their apparent success in getting clients to show up for court and stay out of trouble in part to vetting them through preliminary interviews, and also to the nonprofit’s additional support services beyond paying bail.



Mercy Johnson, right, of The Bail Project, and Kelsey Trejo, of the Tulsa County Public Defender's Office, prepare clothing and hygiene items for a client on March 9 at the county courthouse in Tulsa, Oklahoma.
Michael Noble Jr. for CNN



Clothing and hygiene items prepared for newly released Delmar Willis, who was bailed out of jail by The Bail Project on March 9 in Tulsa, Oklahoma.
Michael Noble Jr. for CNN

These include reminders for upcoming court appearances and free transportation to hearings, as well as referrals to mental health providers and career counseling.

Still, CNN's review of the Minnesota Freedom Fund and the Northwest Community Bail Fund challenges Steinberg's contention that cash-bail proponents' skin-in-the-game argument is bogus.

In Minnesota, CNN analyzed every case in the state in which a defendant was bailed out of jail by a third party – including either the Minnesota Freedom Fund or a commercial bail-bond company – in 2021 and 2022 and was convicted of at least one charge. (Detailed case histories of people who weren't convicted are not available remotely or as bulk data in Minnesota.)

About 42% of the roughly 500 defendants bailed out by the Minnesota Freedom Fund later failed to appear at one or more court hearings. The corresponding figure for the 16,000 defendants released on commercial bail: 22.5%. The Minnesota Freedom Fund says its failure-to-appear rate for all its clients – including those who weren't

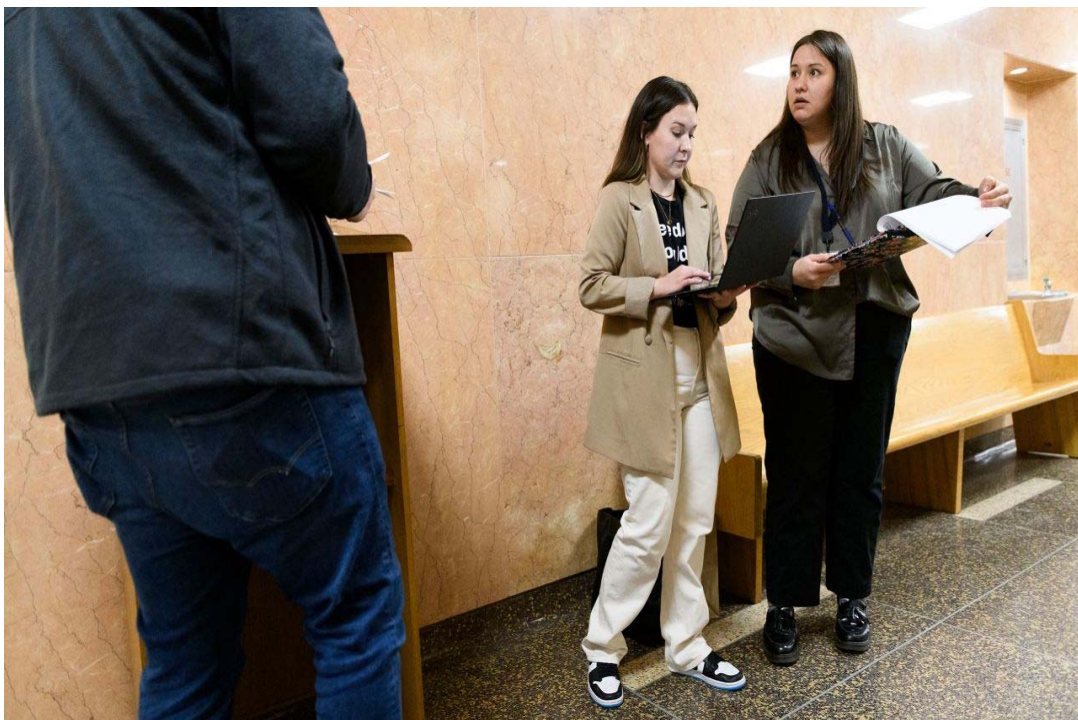
convicted – fluctuated in 2021 between 18%-24%; comparable data for commercial bail bondsmen isn't available.

In the Seattle area, the Northwest Community Bail Fund has facilitated about 440 bailouts since summer of 2020; those defendants failed to appear in court 52% of the time, according to data provided to CNN by the King County Prosecuting Attorney's Office in early January. The corresponding figure for the 3,000-plus occasions in which defendants were bailed out in more traditional ways was 24%.

If the results shed light on an under-reported aspect of bail, they should also be read with caution. Funk of Columbia Law School said that the populations might be quite different: People helped by the charities are more likely than people released on commercial bond to be too poor to pay for their bail.

"The charitable bail funds, just by the nature of the enterprise, are going to be helping the riskier people," he said.

In Washington state, the risk isn't confined to higher failure-to-appear rates. Since summer of 2021, at least four defendants bailed out by the Northwest Community Bail Fund were later arrested again on allegations of murder.



When Delmar Willis, left was bailed out of jail in Tulsa, Oklahoma by The Bail Project on March 9, he was furnished with a phone, a Walmart gift card, clothing and hygiene items. Helping him were Johnson, center, and Trejo. "Nobody has done anything like this for me," Willis said.
Michael Noble Jr. for CNN

‘They just turned a monster free on the street’

The story of one egregious case in Seattle began in spring of 2021, when a 240-pound homeless man was arrested on suspicion of pummeling a 65-year-old amateur photographer and stealing his camera in a Seattle city park, according to court records. The victim had loss of vision in one eye.

The prosecuting attorney's office asked the judge to set the bail high for Michael Sendejo, arguing that Sendejo posed a danger.

"The State is concerned about the safety of the community if the defendant is released from custody," wrote a deputy prosecutor, noting that, when the photographer returned to the park to ask Sendejo for his camera back, Sendejo assaulted him again with a piece of wood, "leaving bruising on the victim's legs."

The judge said that while she was concerned about Sendejo's lack of cooperation with the responding police officers, she sided mostly with the defense and set bail at \$5,000 – a quarter of the prosecutor's request – based on what was understood at the time to be Sendejo's lack of a serious criminal history.

The Northwest Community Bail Fund stepped forward to pay it, and Sendejo was set free.

Weeks later, in June of 2021, Sendejo was arrested on suspicion of murder in the same park. The victim, 31-year-old Bradley Arabie, instigated the fight, court records say, but was dwarfed by Sendejo's size. Autopsies showed Arabie had been strangled and stabbed at least eight times.

"He begged for his life," Sendejo told an investigating officer, according to court records. "I was not interested."

Last October, Sendejo, 51, was convicted of second-degree murder.

Angela Arabie, Bradley's mother, is furious that the judge set bail so low over the prosecutor's objections, and that the bail charity paid for the release of a man who was "a danger to Seattle."

"They just turned a monster free on the street, and they didn't even know he was a monster," she told CNN.

The Northwest Community Bail Fund said in a response to CNN that decisions about fulfilling a request for bail assistance are "made on an individual basis and by team consensus, with a focus on reducing harm."



Angela Arabie and Bradley Arabie.
Courtesy Angela Arabie

"Factors that may play a part in our decisions include but are not limited to ability to afford bail amount, health factors, pregnancy, impending loss of job, housing or shelter bed, race, gender status, separation of families."

CNN's review of the roughly 60 bail charities in the National Bail Fund Network found their stated criteria for deciding whom to bail out varies, with many listing factors similar to the ones mentioned in the Northwest Community Bail Fund's statement.

Some limit their clientele to defendants accused of nonviolent offenses. Such is the case for the Luke 4:18 Bail Fund in Fort Worth, Texas, which as a matter of policy does not provide bail for people accused of murder, charges of an aggravated or sexual nature or human trafficking. Others take more of an absolutist approach: The Richmond Community Bail Fund in Virginia says on its website that it bails out whomever it can "regardless of the charge or criminal history." Some favor not only the abolition of bail, but of prisons and the police.

The state of Indiana criticized The Bail Project for lacking transparency about its criteria for choosing whom to release.

“The organization’s staff decides who is eligible based on its own ‘highly individualized’ process, but it has not shared any specific criteria,” a deputy attorney general wrote in the state’s response to The Bail Project’s lawsuit.

The Bail Project’s leaders told CNN they typically interview potential clients in jail before agreeing to take on their case; the organization helps about 60% of its applicants. Although The Bail Project takes into consideration a defendant’s bail amount and track record of showing up for court, it does not typically weigh criminal history or the severity of charges – the organization says those factors are for judges to consider when making bail-setting decisions.

That approach has backfired.



Tanner DeLapp, of The Bail Project, fills out bail forms for three clients on March 9 in Tulsa, Oklahoma.
Michael Noble Jr. for CNN

A case in point is Marcus Garvin, an Indiana man who was awaiting trial on allegations that he’d stabbed a customer in the back with a six-inch blade at a gas station where Garvin worked the register in late December 2020. A probable cause affidavit obtained by CNN said Garvin, now 33, was annoyed that the customer was taking too long in the restroom and attacked him as they walked outside the building. Immediately after the incident, a video captured Garvin tossing the kitchen knife on the cashier counter and saying, “Damn that was satisfying” before he resumed checking out other customers, according to the court document.

Over the objections of the prosecutor, a judge in January of 2021 initially reduced bail from \$30,000 to \$15,000, citing Garvin’s limited criminal history. Then, responding to the defense attorney’s request to bring it down further to \$1,500 “so we could ask for The Bail Project involvement,” the judge obliged. The charity covered it and Garvin was released with a GPS monitoring device.

That summer, in a motel room at the Always Inn where Garvin was living with his girlfriend, 30-year-old Christie Holt, Garvin woke up Holt and confronted her about text messages she was sending to another man, according to an affidavit.

Furious that they were poking fun at him behind his back for his failures in life, Garvin confessed to police that he stabbed Holt in the neck during the argument and kept attacking her with the knife as she fought for her life, according to the affidavit. Jury trials for both of Garvin’s cases – the gas-station stabbing and the murder – are currently scheduled for May.

The charity also bailed out a man in custody for a felony burglary charge who was arrested eight months later on suspicion of luring two police officers into a street and ambushing them, stabbing one in the neck and the other in the chest. Both survived.

These and other cases caught the attention of the local media. Intensifying the drama was the discovery that the bail charity had received city taxpayer dollars – \$150,000 over two years.

That, said state Senator Aaron Freeman, is what prompted him to co-sponsor the successful legislation to restrict bail charities.

“That should not be the purpose of public tax dollars,” said Freeman, a Republican. “That is, in my opinion, insane.”

A murder humbles Minnesota Freedom Fund

In August of 2020, Greg Lewin, then the interim executive director of the Minnesota Freedom Fund, raised eyebrows when he stated, “I often don’t even look at a charge when I bail someone out.”

But the fall 2021 alleged road-rage incident leading to the murder charge for George Howard shook the organization’s confidence.

Several hours after CrimeWatchMpls posted its tweet blasting the organization for having bailed Howard out on a domestic assault charge – he was ultimately convicted of misdemeanor disorderly conduct in that case – the charity tweeted a pedantic statement.

“MFF believes that every individual who has been arrested by the law enforcement is innocent until proven guilty, and if a judge deems them eligible for bail, they should not have to wait in jail simply because they don’t have the same income or access to resources as others,” it said.

Later that evening, the charity deleted the tweet and issued a new statement acknowledging the human toll.

“The killing of Luis Martinez Ortiz is an undeniable loss and tragedy for the entire community,” it said. “We have heard from you and we have revised this statement because our previous statement did not acknowledge this deep loss and for that we apologize.”



Elizer Darris sits for a portrait in the living room of his Minneapolis home in October 2016.
Evan Frost/Minnesota Public Radio/AP

Elizer Darris, one of the Minnesota Freedom Fund’s co-executive directors, said the organization needed to be more rooted in the moment as a member of the community.

“The principles that we profess – they are enshrined within our mission statement and bylaws,” he said. “But we’re more than that. ... These are our neighbors, our cousins – we see each other in a grocery store. So, it was bigger than that. And we decided that we needed to communicate differently.”

For Darris, the topic of incarceration is personal. At 16, he was tried as an adult and convicted in 2001 for the murder of a 42-year-old carnival worker who'd been bludgeoned with a car jack in northwestern Minnesota, according to news reports and court documents. Darris was among a handful of suspects arrested, though he was the only one who didn't accept a plea deal and went to trial. While Darris has spoken publicly about the incident, he declined to comment about it for this story, saying it is not relevant to the work of the Minnesota Freedom Fund.

A year after his 2016 release, Darris told Minnesota Public Radio that he did not expect the family of the murder victim – Cornelius Rodgers – to forgive him. But he said he hopes that Rodgers' relatives would see “the absolute effort that I have put in, and that I continue to put in, in order to make things different.”

Among his pursuits – many of which have centered on progressive causes – has been to join the Minnesota Freedom Fund.



Elizer Darris, co-executive director of the Minnesota Freedom Fund, speaks at a news conference at the Minnesota state Capitol in St. Paul on January 9.
Steve Karnowski/AP

Not long after Darris' hiring in spring 2021, the nonprofit instituted a cap on bail amounts, which tend to correlate with charge severity. The organization that year also launched a post-release program that includes access to services like housing, employment and mental healthcare.

Darris stressed that the organization – despite its national prominence – is a community bail fund.

“We see our neighbors as neighbors. And when there's harm, we feel it,” he said. “And we do attempt to do what we can to reduce harm.”

ADDITIONAL CNN CREDITS:

Data analysis: [Casey Tolan](#) and Annette Choi

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Lake County Gazette

Pritzker on cashless bail: 'It's a more fair system than to have some people sitting in jail for days, weeks or months when they just don't happen to have the few hundred dollars'

LOCAL GOVERNMENT



Illinois Gov. J.B. Pritzker in Geneseo last week | facebook.com/GovPritzker

By Lake County Gazette Report
Mar 28, 2023

Illinois Gov. J.B. Pritzker is defending the idea of a cashless bail system as a "more fair" system, The Center Square **reported**.

"It's a more fair system than to have some people sitting in jail for days, weeks or months when they just don't happen to have the few hundred dollars, or a

couple of thousand dollars, again when they've committed a nonviolent crime, to be let out," Pritzker said, the story said.

The law ending cash bail statewide was initially passed with the SAFE-T Act in early 2021, with lawmakers having amended the law several times since then, including last fall when the Democratic majority modified it to allow denial of pretrial release for a slew of serious crimes, ranging from murder to kidnapping and more, according to the Center Square.

With the law slated to go into effect at the start of the new year, the day before the Illinois Supreme Court suspended the measure pending an appeal from the Pritzker administration, legislative leaders and the Illinois Attorney General, the story said. If the legislation is restored as signed, violent criminals will remain behind bars at the judge's discretion, the governor said, according to The Center Square.

Pritzker recently downplayed concerns raised over his million-dollar donation to two then-supreme court justice candidates now on the bench of seven. Critics charge such a perceived conflict is enough to taint the possible outcome.

Jeff Clayton with the American Bail Coalition said judges already have the ability to set lower bail for lower-income defendants.

"Are first-timers who can't afford bail stuck in jail, generally not, and I think Illinois being a progressive state, we've already seen that, that those people just don't exist, and that's exactly what we saw in New York," Clayton told WMAY, the Center Square reported. "Laws like this benefit recidivist defendants."

May 17, 2023

CRIME AND PUBLIC SAFETY

News

Judge halts cash bail for low-level LA County cases

By JOSH CAIN | Los Angeles Daily News

A Los Angeles County Superior Court judge issued a stinging rebuke of cash bail as a way for local officials to jail people accused of crimes before they've actually been charged in a wide-ranging preliminary injunction handed down Tuesday, May 16.

In the 64-page ruling, Judge Lawrence Riff said he was granting the preliminary injunction halting the county's cash bail system to six plaintiffs suing after they were all arrested and held in jail for five days because they could not afford their bail amounts.

Among the plaintiffs are three men arrested in the San Fernando Valley and held both at the Los Angeles Police Department's Devonshire and Foothill stations and the Van Nuys jail. They're suing L.A. County, the Sheriff's Department, LAPD and other agencies over their detention, arguing their constitutional rights were violated.

Both sides told the judge they would be ready to go to trial in about a year — until then, Riff said, he could not allow the county's cash bail system to continue.

"Between now and then, tens of thousands of persons will be arrested by the LASD and LAPD and jailed under the extant bail schedules solely because they are too poor to pay the scheduled money bail," Riff wrote.

"Others, arrested for the identical offense and otherwise indistinguishable from the arrestees in the putative plaintiffs' class, will be promptly released because they can raise the funds to pay the secured money bail."

Because of this, Riff said, "it would be an abuse of the court's discretion *not to enter*" a preliminary injunction. He called the county's cash bail system "a clear, pervasive, and serious constitutional violation."

Both the county and the group of civil rights attorneys who filed the lawsuit on behalf of the six plaintiffs will get 60 days to come up with a new system to keep track of defendants before they're arraigned, which could include options like releasing defendants on their own recognizance or electronically monitoring them.

Cash bail will still be required for people accused of serious or violent crimes.

The ruling is a major win for opponents of cash bail who have sought to eliminate what they have called an unequal system benefiting the wealthy, who can easily afford to bail themselves out of jail while poorer defendants accused of the same crimes cannot.

Riff's ruling, according to court records, was based on testimony from several experts during a series of hearings in the judge's courtroom earlier this month.

The judge noted that six plaintiffs were just a few of the tens of thousands of people who are arrested annually and then held in jail until a bench officer determines under what conditions they may be released while awaiting further court hearings.

"Every time a court has heard *actual evidence* in my decade of litigating the cash bail issue across U.S., Republican and Democratic judges alike have found there is no basis in evidence for cash bail," wrote Alec Karakatsanis, one of the civil rights attorneys on the lawsuit, on Twitter, where he frequently posts lengthy criticisms of the system.

"It makes us less safe and destroys lives."

L.A. County has eliminated cash bail before — the Superior Court in 2020 set most cash bail amounts for minor crimes to zero in the midst of the COVID-19 pandemic. As a result, thousands of people jailed at the time were released early out of fear confining them in cramped conditions would spur even more spread of the virus and lead to deaths.

The court system renewed cash bail in 2022 after the threat of the virus slackened. Riff wrote that the experts who testified showed there was neither an increase in crime in L.A. County nor a decrease in defendants failing to appear at their court hearings as a result of ending cash bail.

In fact, the judge wrote that the experts proved cash bail increased the prevalence of crime. Among those experts was Dr. Paul Heaton, a law professor at the University of Pennsylvania, who studied bail reform in Harris County in Texas, which operates one of the nation's largest jail systems serving Houston and other cities.

Heaton testified that impoverished defendants detained before their trials were much more likely to commit more crimes in the future.

He said his study showed that defendants held in jail due to their lack of funds were much more likely to plead guilty whether or not they really were, and therefore were much more likely to receive jail sentences. He said those convictions and time spent in jail “causally increases” the defendants’ “likelihood of future arrest for new crimes.”

The judge wrote that numerous local elected officials who might have testified in favor of maintaining the cash bail system, including representatives of the city of L.A. and county government, refused to do so.

L.A. County District Attorney George Gascón, a critic of cash bail, did not return a request for comment on the preliminary injunction Wednesday.

Eric Siddall is the vice president of the Los Angeles Association of Deputy District Attorneys, the union representing the county's thousands of line prosecutors in the D.A.'s office. In a statement, he said the association supported neither “zero bail” nor “oppressive bail.”

Siddall said the solution to the county's bail system is establishing “reasonable bail or release conditions, narrowly tailored to the defendant and the offense and aimed at ensuring that arrestees return to court if their cases get filed.”

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GUEST COLUMN

California bail schedules face dire consequences as state law is ignored

By Jeffrey J. Clayton

Right after the 2020 election, a non-profit group of activist lawyers from Washington, D.C. sued the City and County of Los Angeles, alleging that the bail schedule (and also the imposition of monetary bail in general) violates various state and federal constitutional provisions. In particular, because some people cannot afford bail, those persons will allegedly suffer greater harm while those who are not indigent fare better in the current system.

In California, a class action lawsuit, *Urquidí v. Los Angeles et. al.*, was filed on behalf of Phillip Urquidí, Terilyn Goldson, Daniel Martínez, Arthur Lopez, Susana Perez, and Gerardo Campos, against the County and City of Los Angeles, the Los Angeles Sheriff's Department (LASD), the Sheriff of Los Angeles County, the Los Angeles Police Department (LAPD), and the Chief of the LAPD. The suit challenges the defendants' policy of jailing arrested individuals who are unable to pay the monetary

amounts set by the County's uniform "bail schedules."

Unfortunately, the City and County of Los Angeles utterly failed to defend the lawsuit and Judge Lawrence P. Riff thus granted a preliminary injunction on May 16 in the case. There was precisely zero evidence or legal argumentation presented by the City and County of Los Angeles, except to point out that they do not set the bail schedule and thus they are not the right parties to sue. Instead, they asserted that proper parties

are the State of California, which by state statute requires bail schedules and adherence to them by judges. In fact, Attorney General Rob Bonta, a known advocate for bail reform, was made a party to the case on April 11 as enforcer of state laws, and has still yet to enter an appearance.

The preliminary injunction is going to govern bail in Los Angeles for at least the next year and perhaps beyond. By its terms, it will re-impose the Los Angeles County emergency pandemic bail sched-

ule for the next 60 days. Then, the Civil Rights Corps, the plaintiffs' lawyers, are to come up with a replacement procedure that the city and county will surely fail to contest or defend. Whatever the Civil Rights Corps comes up with will be the pre-arraignment bail system in Los Angeles County during the pendency of the litigation, and beyond if state officials similarly cave to the pressure of activist lawyers.

Anyone looking from the outside of this case might be thinking that money bail is indefensible in California, as is the bail schedule. A good defense most certainly could be made. First, the Civil Rights Corps recently lost the seminal case on this issue, *Hester v. Gentry*, before the U.S. Court of Appeals for the Eleventh Circuit. There,

they argued that Cullman County, Alabama's misdemeanor bail schedule was unconstitutionally unfair to the poor. Not so, said the U.S. Court of Appeals for the Eleventh Circuit. The Court ruled squarely against the Civil Rights Corps' theory on these exact facts. The Civil Rights Corps has appealed that case to the U.S. Supreme Court, which is expected to deny certiorari at any time. In addition, the Civil Rights Corps also lost two major cases in Texas on this precise theory, including *ODonnell v. Harris County, Texas*, a case the U.S. Supreme Court refused to hear after the U.S. Court of Appeals for the Fifth Circuit dumped the Civil Rights Corps' theory of the case.

Practically speaking, getting
See Page 5 — CALIFORNIA

California bail schedules face dire consequences as state law is ignored

Continued from page 1

rid of the bail schedule is going to harm all persons arrested in Los Angeles County. The Committee to Revise the Penal Code recently did an in-depth study of California's bail system that embraced the issue of bail schedules. The Committee failed to recommend a single change to the bail schedule. It was thought that California should swiftly set all bails in

open court with attorneys on both sides. But it was quickly realized that the criminal justice system simply cannot handle the load of the crush of setting bail in an adversary proceeding in open court on all cases. Instead, the system is designed to smooth out the edges, meaning those situations in the penal code where the police or prosecutors are arguing to increase the bail or where the defendant is

indigent or is otherwise entitled to a reduction in bail or to be released on their own recognizance. Therefore, if the bail schedule is eliminated, this will mean increased jail time because those who would have posted bail and been released within hours will instead be held for days until they see a judge — who likely will set the same bail that they would have posted anyway under the previous schedule.

Indigent parties will ultimately wait even longer because judges will be busy setting bails that used to occur automatically.

Right now, it is taking unconstitutionally too long to smooth out the edges on the bail schedule. People can't get in front of a judge for often three to five days. But the solution to a problem where defendants are not getting due process is not to dramatically increase the pressure on

the system — instead, the solution would be to do what little towns and cities sued by the Civil Rights Corps like Cullman County, Alabama have been doing for a decade: speed up the due process for those who cannot afford bail and give them alternatives. In California, alternatives can include court reminders, pretrial supervision, house arrest, check-ins or other pretrial services. Otherwise, local officials will not be able to handle the load, and the risk is that hardened defendants are released en masse on their own recognizance. Without a dramatic infusion of resources from the state legislature, this is a recipe ripe for disaster.

Jeffrey J. Clayton is the executive director of the American Bail Coalition.





COURTS

SCOTUS declines to hear Cullman cash bail case

The case concerning the constitutionality of whether states can make indigent defendants pay schedule-based cash bail originated in Cullman County.

By **PATRICK DARRINGTON**

Published on June 21, 2023 at 2:46 pm CDT

Updated on June 22 at 9:49 am



STOCK

Last Monday, the U.S. Supreme Court declined to hear a court case concerning the constitutionality of whether states can make indigent defendants pay schedule-based cash bail prior to being released pre-trial from jail.

The case in question, [Hester v. Gentry](#) was first brought by Bradley Hester back in 2018. The defense included Sheriff Matthew Gentry and several officials from Cullman County, Alabama. Hester was held pre-trial in jail due to not being able to afford a \$1,000 bail after being charged with possession of drug paraphernalia in 2017 in Cullman County.

Hester and his lawyers initially brought the case before a lower court claiming the bail schedule in Cullman County violated the 14th Amendment rights of due process and equal protection to indigent or poor defendants. The United States District Court for the Northern District of Alabama heard the case first with Hester receiving help from several organizations including the Civil Rights Corps, Alabama ACLU and the Southern Poverty Law Center.

In September 2018, the district court ruled in Hester's favor and issued an injunction to stop Cullman County from instituting cash bail on defendants who could not afford it.

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The defense would appeal this decision and it would be overturned by the U.S. Court of Appeals for the 11th Circuit located in Atlanta. In July 2022, the 11th Circuit ruled in the case that Cullman County's bail system was constitutional. Hester's counsel then sought a writ of certiorari with the U.S. Supreme Court that was eventually denied.

On April 3, 2023, the [American Bar Association](#) filed an amicus curiae brief in favor of Hester's writ of certiorari to the Supreme Court, arguing that Cullman County's bail system represented "overt discrimination" on the basis of wealth.

Jeff Clayton, executive director of the American Bail Association, praised the decision by the Supreme Court to deny hearing the case.

"This is a definitive victory for the constitutional right to monetary bail by sufficient sureties," Clayton said. "It is the second and, perhaps, final time the Supreme Court has rejected the theory put forth by activists that there is a 'right to an affordable bail.' It has also rejected the premise that a municipality, in the operation of their system of pretrial release, may not impose cash bail and employ a schedule of bails. This applies whether it is limited to misdemeanors, as in this case, or felony offenses, as well."

APR spoke to the deputy director of litigation for the Civil Rights Corps, Katherine Hubbard. Hubbard said that case was important because people should not be detained pre-trial because they can't pay their bail.

“Obviously, we are disappointed that the Supreme Court decided not to grant our petition but the case is not over and we’ll be continuing in the district Court,” Hubbard said. “There are a lot of important questions that remain undecided, including whether individuals who are arrested have a right to counsel at bail hearings. And while the district court’s preliminary injunction has now been reversed, we’re heartened to know that in over four years that it was in place thousands of people went home to their families who would otherwise have languished in jail simply because they were too poor to pay bail.”

Many opponents to the idea of allowing people out of jail pre-trial is that it will increase crime or allow people to re-offend. However, Hubbard said there is [evidence](#) that contradicts that notion and actually shows that cash bail increases crime because it destabilizes families who are already poor and has no impact on whether individuals show up to court.

[Data](#) from the Prison Policy Initiative shows that over 400,000 people are currently held pre-trial across the country with 43 percent of the population being Black and the annual national cost of pre-trial detention totaling \$13.6 billion.

Tuesday, August 1, 2023

Expert warns of consequences as Illinois drops cash bail

By Kevin Bessler | The Center Square



The full Illinois Supreme Court panel during oral arguments in the no-cash bail law Tuesday in Springfield. BlueRoomStream

(The Center Square) – Now that the Illinois Supreme Court has ruled that cash bail can be abolished, a bail expert is warning of the consequences.

The 5-2 ruling by the state's highest court overturned a December ruling by a Kankakee County judge that determined a new state law ending cash bail, known as the SAFE-T Act, was unconstitutional. On Sept. 18, Illinois will become the first state to abolish cash bail as a means of pretrial release.

"It is important that every county, big and small, city, suburban and rural, sees this fully and properly implemented," said state Sen. Robert Peters, D-Chicago, after the court's ruling. The Coalition to End Money Bond is holding training sessions for people to learn how to watch pretrial hearings and monitor the implementation of the Pretrial Fairness Act.

Jeffrey Clayton, executive director of the [American Bail Coalition](#), said prosecutors, judges and public defenders haven't received funding to hold the hearings, so he sees complications. "How's that going to happen? Are prosecutors just going to file motions to detain in all eligible cases and let the chips fall where they may or are they going to have to pick and choose?" said Clayton to The Center Square. "Are they going to have the resources to file in all the cases they feel are eligible or not, so yes, I think there's major implementation questions."

There are concerns that Illinois' new system of release and very limited detention without bail will embolden hardened recidivist criminals, as seen in New York state. While New Jersey eliminated monetary bail in 2017, it changed its constitution and spent nearly a billion dollars for prosecutors to perform detention hearings and to create a statewide system of pretrial criminal supervision, including GPS monitoring and house arrest. However, the plan for Illinois is to release criminal defendants, notwithstanding the criminal charges which first led to their arrest.

"So the question now is what is the detention list, and I've been able to obtain a copy from the prosecutors and I can tell you that there are going to be some really serious offenders who are not going to be going to jail," said Clayton.

State Sen. John Curran, R-Lemont, has called for a special session of the legislature to make tweaks to the law, particularly in hopes of giving judges more leeway to hold violent offenders.



Wednesday, August 2, 2023

A bail expert says there will be serious offenders freed now that cash bail has been abolished in Illinois

Vandalia, IL, USA / Vandalia Radio

Todd Stapleton

Now that the Illinois Supreme Court has ruled that cash bail can be abolished, a bail expert is warning of the consequences. As a result of the ruling, in September, Illinois will become the first state to abolish cash bail as a means of pretrial release. State Senator Robert Peters is one of the architects of the SAFE-T Act.



Jeffrey Clayton is the Executive Director of the American Bail Coalition. He says there are several serious crimes that will still allow a person to avoid jail time.



Opponents of the SAFE-T Act had cited studies showing that similar bail reform efforts in Illinois, including not using bail in certain cases, resulted in a significant increase in violent crime.

Story from Illinois Radio Network

Thursday, August 10, 2023

INDIANAPOLIS NEWS AND HEADLINES
POLITICS

Federal appeals court rejects The Bail Project lawsuit, upholds regulations on charity bail



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Photo by: AP



By: Vic Ryckaert

A federal court has upheld a state law that regulates The Bail Project and other charities that pay bail for poor people who face criminal charges.

The Seventh Circuit U.S. Court of Appeals in Chicago rejected The Bail Project's claim that paying bail on someone's behalf is a form of free speech that should be protected by the U.S. Constitution.

"The Bail Project's payment of bail is not inherently expressive conduct," the court majority wrote in the [24-page opinion handed down Aug. 3](#). "The distinctions HEA 1300 draws between charitable bail organizations and other bail payors is rationally tied to Indiana's legitimate interest in regulating its pretrial detention system."

Judge Candace Jackson-Akiwumi disagreed with the majority and said The Bail Project deserves First Amendment protection.

"The Bail Project's conduct is indeed expressive because the organization intends to convey a particularized message," Jackson-Akiwumi wrote in her dissent, "and not only was the likelihood great that those who viewed the conduct would understand that the organization intended to convey a message, the record shows that those who viewed the conduct did understand as much."

The Bail Project and the ACLU of Indiana have been seeking to block and overturn regulations on charitable bail organizations that took effect last year.

That law, [HEA 1300](#), requires charitable bail organizations be licensed and regulated by the Indiana Department of Insurance and limits who can be bailed out.

The Bail Project and similar charities are allowed to post bail for most people charged with misdemeanors or non-violent felonies, but the law bars the groups from assisting people accused of violent felonies or those who have ever been convicted of a violent felony.

In a statement emailed to WRTV, Katie Poor, The Bail Project's general counsel, expressed disappointment and promised to keep fighting.

"This law created a double standard in how nonprofits that provide free bail assistance are treated versus bail bond companies that profit from bonding people out," Poor said. "We plan to ask for rehearing before the full court."

Supporters of the law say it regulates non-profit groups like The Bail Project in the same way the state regulates private bond companies.

"I think if you're going to come in, and you're going to try to destabilize the bail system, I think the legislature has the right to say something about that," said Jeff Clayton, executive director of the American Bail Coalition. "I think it's fair ruling that the Indiana legislature could choose to do something."

Clayton's organization represents about 13,000 private bail agents in 46 states, including about 500 in Indiana.

The Bail Project and others who oppose the law say it creates a two-tiered justice system where poor people sit in jail while those with money remain free.

On its website, The Bail Project says its ultimate goal is to "take money out of justice and to create a pretrial system that is more just, equitable and humane."

The Bail Project paid bail for about 1,000 people in Marion and Lake counties since it began operating in Indiana in 2018.

The group was sharply criticized last year after three clients it helped make bail were later accused of committing violent crimes.



David Gaspar, The Bail Project's national director. Vic Ryckaert/WRTV

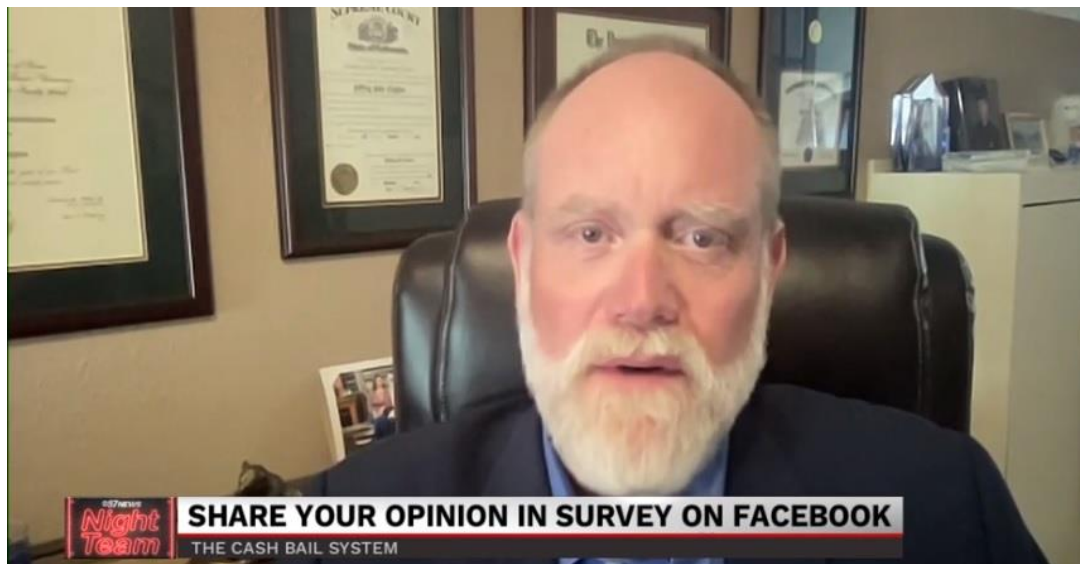
In a [March 2022 interview](#), The Bail Project's David Gaspar told WRTV the group does more than just pay bail. It connects its clients with mental health services, transportation, housing and other resources.

"We take the presumption of innocence very seriously, and our goal is to ensure people have equal access to this Constitutional protection regardless of how much money they have in their bank account," Gaspar said.

Monday, August 14, 2023

Lawsuit against Indiana's charitable bail law fails, advocates promise to challenge ruling

By: Tim Spears



A federal court has ruled Indiana's new law limiting charitable bail groups can go into effect, as advocates push for an end to the cash bail system.

In recent years, more groups like [The Bail Project](#) have emerged. Believing the bail system essentially criminalizes poverty, the non-profit posts bail for defendants free of charge.

The Bail Project tells ABC57 it's helped more than 1,000 low-income Hoosiers since 2018, with 94% of them making their court date even with no financial obligation. It claims that percentage holds up across the two-dozen jurisdictions it operates.

A new Indiana law, [HEA 1300](#), limits who these charitable bail groups can help and requires these groups to register with the state. The Seventh Circuit Court ruled, Thursday, the new law can take effect [despite the lawsuit](#) from The Bail Project and ACLU of Indiana claiming it violates freedom of speech protections.

"We're disappointed by the panel's decision," The Bail Project said in a statement to ABC57 News. "This law created a double standard in how nonprofits that provide free bail assistance are treated versus bail bond companies that profit from bonding people out. we plan to ask for a rehearing before the full court."

The question facing lawmakers and law enforcement across the country is whether the cash bail system should continue.

According to the [US Commission on Civil Rights](#), more than 60% of defendants are detained pre-trial because they can't afford to post bail. The Commission reports, between 1970 and 2015, there was a 433% increase in the number of people detained pre-trial, with significantly higher pre-trial detention rates from Black and Latinx groups compared to other demographics. In July, Illinois became the first state in the nation to [eliminate cash bail](#). Under the new system, a judge decides whether a defendant poses too much of a threat to release.



But the [American Bail Coalition](#), a trade group made up of bail bondsmen and similar companies, claims the current cash system is preferable because a judge's decision based on criminal history or accusations may be more difficult to challenge than posting bond.

"I think their whole thing to end cash bail begs the question, 'and then what?' What type of system do we want?" American Bail Coalition Executive Director Jeff Clayton said. "Do we want a system of risk-based preventative detention, where we base your bail based on your predicted future behavior? I don't think so. So I think that's really what the issue is, is what would we replace it with? And that's where things get fuzzy for The Bail Project and others."

You can watch ABC57's full interview with the American Bail Coalition [HERE](#)



Jeffrey J Clayton: Illinois Banning Cash Bail is Catastrophic to Victims

by [The Jeff Dornik Show](#)
[August 17, 2023](#)



Crime is out of control, especially in the Democrat-run cities and states. San Francisco, Los Angeles, Portland, New York City and Washington DC are perfect examples. The crime spike, especially violent crimes, is a direct result of the soft-on-crime Democrat policies being implemented. This should be one of the big issues the GOP runs on in 2024.

Obviously, after the Black Lives Matter riots, we saw numerous Democrat governments around the country move to defund the police, which has led

to more crime and more people fleeing these crime-infested cities simply because they want their family to be safe.

Now we are seeing the push to end cash bail, which is just another step the Dems are taking to keep violent criminals out of prison and on the streets. The true victims in all of this are the law-abiding citizens who are facing constant threats of violence and theft with little to no pushback from law enforcement, often times because the governmental leaders tie their hands behind their back to keep them from properly policing crime.

Jeffrey E Clayton, Executive Director of the American Bail Coalition, joins this episode of The Jeff Dornik Show to share his views on the Supreme Court of Illinois banning cash bail and the state's new policy regarding who goes to prison and who is released.

CALIFORNIA★POLITICAL
REVIEW

U.S. COURT OF APPEALS FOR THE 7th CIRCUIT RULES THE BAIL PROJECT IS NOT ABOVE THE LAW IN MAJOR VICTORY FOR PUBLIC SAFETY AND COMMON SENSE

August 18, 2023 By Stephen Frank

At least in some areas of the country the idea of putting criminals in jail is still OK.

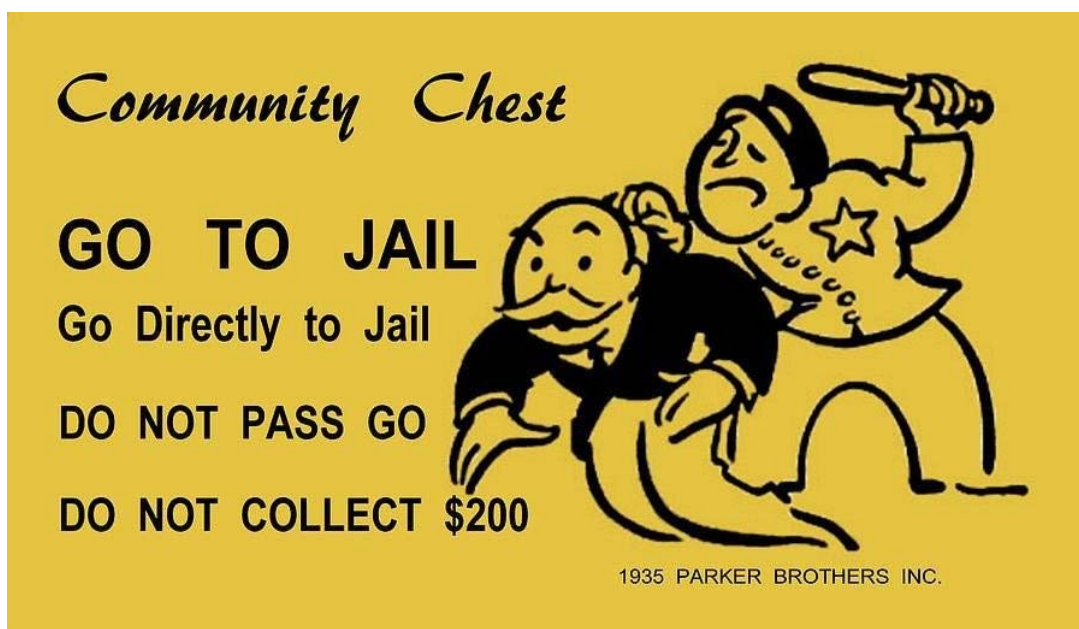
“In its ruling, the Seventh Circuit held that The Bail Project’s act of posting bail on its own is not protected speech. The court held that “nothing about the act itself inherently expresses any view on the merits of the bail system.” In other words, The Bail Project’s advocacy itself is considered the free speech, not the posting of bail.

In addition, the court maintained that the Indiana Legislature and other legislative bodies have the absolute authority to regulate non-profit bail organizations, including The Bail Project, whether they are local or national in scope. It elaborated by noting Indiana’s legitimate interest to regulate its pretrial detention and bail system, indicating that the very basis of HEA 1300 was “rationally related to that interest.”

The Seventh Circuit also noted that “charitable bail organizations have different incentives, resources, and ties to the community than other bail payors, and therefore, that it was appropriate to treat them differently than bail payors who risk their own money and weigh their own safety to bail out a defendant.” This seems a strong endorsement of the arguments made in the Hofstra Law Review, which argued that crowdsourced bail, like the national Bail Project, absent further regulation, is an insufficient surety as a matter of law and should be disallowed.

That is how screwed up the so called Justice system is—the ACLU considers NO bail to be a form of free speech. Steal from someone therefore is a form of free speech. Are they crazy? YUP.

U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT RULES THE BAIL PROJECT IS NOT ABOVE THE LAW IN MAJOR VICTORY FOR PUBLIC SAFETY AND COMMON SENSE



By Jeffrey J. Clayton, Executive Director, American Bail Coalition, Exclusive to the California Political News and Views 8/18/23 <https://ambailcoalition.org/>

In a major victory for common sense and any American concerned about public safety, the United States Court of Appeals for the Seventh Circuit ruled against The Bail Project in its attempt to put a stop to a law passed by the Indiana legislature that would regulate so-called charitable bail funds.

The Court of Appeal's ruling represents an historic defeat for The Bail Project and will send a green light to all other state legislatures to regulate charitable bail funds. It also reinforces the reason why bail is necessary and is such an integral part of our criminal justice system. It keeps dangerous individuals who cannot secure their release behind bars pending trial. If they are to be freed, it must be done through a process that considers bona fide economic incentives that will guarantee their appearance in court.

Indiana lawmakers passed HEA 1300 last year, which required non-profit bail organizations to be licensed, while also prohibiting them from bailing out individuals charged with certain felonies or with a record of past violent crime convictions. In response, The Bail Project filed a lawsuit in federal court (*The Bail Project, Inc. v. Commissioner, Indiana Department of Insurance*), but was denied a request for a preliminary injunction.

The Court of Appeals' decision made quick work of the premise of the organization's principle arguments, which included the assertion that its right to free speech had been violated, as well as its rights under the equal protection clause of the 14th Amendment.

In its ruling, the Seventh Circuit held that The Bail Project's act of posting bail on its own is not protected speech. The court held that "nothing about the act itself inherently expresses any view on the merits of the bail system." In other words, The Bail Project's advocacy itself is considered the free speech, not the posting of bail.

In addition, the court maintained that the Indiana Legislature and other legislative bodies have the absolute authority to regulate non-profit bail organizations, including The Bail Project, whether they are local or national in scope. It elaborated by noting Indiana's legitimate interest to regulate its pretrial detention and bail system, indicating that the very basis of HEA 1300 was "rationally related to that interest."

The Seventh Circuit also noted that "charitable bail organizations have different incentives, resources, and ties to the community than other bail payors, and therefore, that it was appropriate to treat them differently than bail payors who risk their own money and weigh their own safety to bail out a defendant." This seems a strong endorsement of the arguments made in the *Hofstra Law Review*, which argued that crowdsourced bail, like the national Bail Project, absent further regulation, is an insufficient surety as a matter of law and should be disallowed.

The Bail Project has refused to take responsibility for bailing out individuals who went on to commit violent crime — even murder — after their release was secured by the organization. In 2021, an Indianapolis man, Marcus Garvin, stabbed his girlfriend to death after being bailed out by The Bail Project, despite a history of violence. In the wake of the tragedy, the group's national operations director said, "As tragic as that particular event was, it still is a very small percentage of the reflection of the work that we do." He added, "This just happens to be an example of a tragic event."

Legislatures throughout the country should look upon The Bail Project's thorough defeat as a signal that they can and should regulate charitable bail funds operating in their jurisdictions.

With the decision of the U.S. Court of Appeals for the Seventh Circuit, The Bail Project can no longer use the bail system to make a point about their perceived inequities of the criminal justice system. Of course, they are still free to bail people out, but only if they follow the rules. The much bigger message of the court's ruling is that state legislatures have the authority to regulate and cut off access to prevent their meddling with the pretrial detention and release system. Bail funds have different incentives than private payors, and thus may be regulated.

At the end of the day, one wonders whether The Bail Project and its supporters would be better off advocating for the precise legal changes they want, rather than bailing out dangerous people who would be otherwise be in jail. If they truly believe that money bail is fundamentally wrong, they should make logical and legally sound arguments against it. Instead, their approach, which only serves to outrage, obfuscates and confuses their message, and ultimately serves no one.

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About Jeffrey J. Clayton, Executive Director of the American Bail Coalition:

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an

M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

Wednesday, August 30, 2023

Is paying bail ‘expressive’? Bail Project’s legal fight continues amid uncertain future

Tyler Fenwick

After running into another roadblock on its quest to overturn a state law that limits its operations in Indiana, The Bail Project isn’t committing one way or the other on whether it will continue working in the state.

The national organization advocates for an end to cash bail and pays bail for indigent pretrial detainees. The Bail Project started operating in Indiana in 2018, first in Marion County and later in Lake County.

But its future is uncertain after the 7th Circuit Court of Appeals affirmed a district court’s denial of the organization’s motion for a preliminary injunction against a law that puts limits on whom charitable bail organizations can bail out of jail.



Jeremy Cherson

Jeremy Cherson, The Bail Project’s director of communications, said the organization was disappointed with the ruling, and while it plans to continue its legal battle, The Bail Project hasn’t accepted new referrals since the law went into effect July 1, 2022.

Now, outside of the 50 active client cases the organization is keeping up with in Indiana, it’s not clear what role The Bail Project may play in one of the first states to enact such restrictions.

“I think it’s something we’re still continuing to take stock of,” Cherson said.

The Bail Project is challenging House Enrolled Act 1300, which defines “charitable bail organization” and prevents any person charged with a violent crime from being bailed out by a charitable bail group. Anyone charged with a new felony who has a past conviction of a violent crime also can’t receive bail assistance from charitable bail groups.

Paying bail not ‘expressive activity’

The 7th Circuit opinion that came down in early August largely dealt with a First Amendment claim. When the American Civil Liberties Union of Indiana filed a lawsuit on behalf of The Bail Project in May 2022, part of the argument was that paying bail “represents the organization’s essential protest and expressive activity.”

But a two-thirds majority of the appellate court’s panel disagreed, ruling that paying bail “does not communicate even the most general version of The Bail Project’s message — its opposition to cash bail.”

“Without knowledge of The Bail Project’s mission and repeat-player status, a reasonable observer would not understand its payment of cash bail at the clerk’s office as an expression of

any message about the bail system,” Judge Thomas Kirsch wrote for the majority that also included Senior Judge Joel Flaum.

Judge Candace Jackson-Akiwumi dissented, writing that the majority didn’t consider the context and audience.

“When considering the context — including the relevant audience — of The Bail Project’s actions, I see a high likelihood that those who observed the conduct understood that some type of message was being conveyed,” she wrote.

The Bail Project in Indiana

- The Bail Project hasn’t taken new referrals in Indiana since a law limiting its operations went into effect in 2022.
- Jeremy Cherson, the group’s communications director, said The Bail Project has provided pretrial support – bail, transportation, employment assistance, etc. – to nearly **1,200** people in Indiana.
- Currently, the group has **50** clients with active cases in the state.

Source: The Bail Project

Bail funds ‘not just about freeing people’



Jocelyn Simonson

Jocelyn Simonson, a professor of law and associate dean for research and scholarship at the Brooklyn Law School, said she has studied and worked with bail funds for more than a decade. The reason bail funds like The Bail Project are important, Simonson said, is because they’re making a “larger democratic point” about the cash bail system and criminalization.

“Community bail funds are not just about freeing people,” said Simonson, whose recently published book, “Radical Acts of Justice: How Ordinary People Are Dismantling Mass Incarceration,” is partly about bail funds.

When groups like The Bail Project post bail for people over a period of time, Simonson said that amounts to a “powerful” political statement.

She said she sees legislation like HEA 1300 as part of a larger backlash against bail funds, of which she said there are slightly fewer than 100 that are active in the United States — compared to just three in 2015.

The Indiana Legislature, Simonson opined, didn’t pass a new law because it was concerned about people being bailed out of jail. Instead, she said lawmakers were responding to the political pressure bail funds are applying.

“That’s what they’re afraid of,” she said. “They’re afraid of the message.”

Who’s held to a higher standard?



Jeff Clayton

Jeff Clayton, executive director of the American Bail Coalition, said he's hopeful the 7th Circuit's decision will spur more legislation around the country to regulate bail funds.

"This certainly tells other state legislatures they're on firm ground if they do want to take it up," he said.

The American Bail Coalition is comprised of surety insurance companies that back commercial bail bonds.

There's an argument on both sides of the bail fund debate about which side is held to a higher standard: the nonprofit or for-profit side. The commercial side has two layers of regulations, Clayton said: There's one for the bondsmen and one for the insurance companies that underwrite them.

"I don't think we're getting away with one," he said. "... They got a little taste of regulation."

Part of The Bail Project's argument is that HEA 1300 violates its rights under the equal protection clause of the 14th Amendment by limiting its activity but not the activity of for-profit entities.

The Indiana Attorney General's Office, which is representing the state in the legal proceedings, declined to comment on the record.

What's next?

The Bail Project has filed a petition for the 7th Circuit to rehear the case en banc.

The organization argues the 7th Circuit majority's conclusion is in conflict with *Spence v. Washington*, 418 U.S. 405 (1974).

In *Spence*, the U.S. Supreme Court ruled the appellant's activity — displaying an upside down flag — when "combined with the factual context and environment in which it was undertaken," leads to the conclusion that he was engaging in protected speech.

Judge Jackson-Akiwumi cited *Spence* in her dissent.

The Bail Project also acknowledged in its filing that the 7th Circuit decision could have a far-reaching impact.

"Given the numerous other jurisdictions where The Bail Project operates, not to mention the proliferation of similar groups around the country that are seeking to influence cash-bail practices in the same way as The Bail Project, the failure to recognize that the act of paying bail by these groups is expressive allows for jurisdictions to impose crippling restrictions, like Indiana's, specifically targeting these groups and aiming to end or hinder their expressive activities," the group wrote. "The injury to the First Amendment interests occasioned by the panel majority's decision in this case is therefore not limited to Indiana."•

Daily Journal

Judges And Judiciary

Sep. 8, 2023

Parties argue significance of US judge's bail ruling

"The Sheriff and the Attorney General are now prohibited from enforcing the bail schedule or any variation thereof," Equal Justice Under Law Executive Director Phil Telfeyan said.

Cash bail opponents touted a "monumental victory" this week, while an industry spokesman accused them of "spiking the football" over "old news:"

U.S. District Judge Troy L. Nunley's ruling follows several similar orders around the state. It will require Sacramento County to allow defendants to argue for lower bail on multiple grounds.

"The sheriff and attorney general, in its role as supervisor over the sheriff, are enjoined from using or enforcing the 2016 Sacramento County pre-arraignment bail schedule at issue in the instant case, as well as any subsequent pre-arraignment bail schedules in Sacramento County that set specific dollar amounts for bail by reference solely to criminal charges, without allowing defendants to modify an amount by making an individualized determination as to the arrestee's ability to pay, risk of nonappearance, or threat of public safety before trial," Nunley wrote in his order issued Tuesday.

Equal Justice Under Law, which filed the case in 2016, called Nunley's ruling a "monumental victory" in a news release issued Thursday. *Welchen v. Bonta*, 2:16-cv-00185-TLN-DB (E.D. Cal., filed Jan. 29, 2016).

Jeff Clayton, the executive director of the American Bail Coalition, scoffed at this claim. He noted Nunley granted summary judgment to the plaintiffs a year ago.

"EJUL is trying to re-trumpet a minor victory they won last year, which is that defendants may not be subject to a bail schedule without proper review procedures therefrom," Clayton said in an email. "The review procedures in Sacramento being inadequate, the system was held unconstitutional by Judge Nunley last year. That's not to say bail

schedules are per se unconstitutional or that you can't use 'cash bail,' but instead, that when you sit in jail for six days, like Mr. Welchen did, without getting a chance to have the bail by schedule adjusted by a judge, such runs afoul of the federal due process clause."

But Equal Justice Under Law Executive Director Phil Telfeyan said the new order will help defendants.

"Judge Nunley made an important order in September last year declaring Sacramento's bail schedule unconstitutional," Telfeyan said in an email. "His ruling this week gives teeth to that ruling. The sheriff and the attorney general are now prohibited from enforcing the bail schedule or any variation thereof. This order guarantees the constitutional rights of the people of Sacramento."

Plaintiff Gary Wayne Welchen was arrested by Sacramento police in 2016 on suspicion of second degree burglary. Despite being indigent, he was held for six days in lieu of \$10,000 bail. In his ruling last year, Nunley found "the bail schedule violates plaintiff's substantive due process pretrial liberty rights."

In that ruling, Nunley cited several rulings issued after Welchen's attorneys filed his case years earlier. These include *In re: Humphrey*, 11 Cal. 5th 135 (2021), in which the California Supreme Court ruled holding defendants solely because of their inability to pay bail violated their 14th Amendment rights under the U.S. Constitution, and *Buffin v. City and County of San Francisco*, 4:15-cv-04959-YGR (N.D. Cal., filed Oct. 28, 2015), which resulted in a settlement scrapping that county's cash bail schedule.

"This is similar to what occurred in San Francisco," Clayton said of Nunley's ruling. "In fact, legislation was run this year to improve pretrial due process, which in California is severely lacking, as we have also seen in litigation concerning the bail schedule process in Los Angeles that was also found unconstitutional due to inadequate due process review procedures." .

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Thursday, October 5, 2023

Former prosecutor says Illinois' SAFE-T Act an 'experiment'

By Kevin Bessler | The Center Square



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(The Center Square) – As Illinois prosecutors deal with provisions of the SAFE-T Act, including cashless bail, the long-term repercussions remain to be seen.

State's attorneys already are voicing concerns about some people facing charges who are able to avoid jail and who could commit additional crimes or not show up for court.

Northern Illinois University law professor and former prosecutor Dan McConkie said it is a myth that everyone who commits a crime will walk.

"It is true that we are going to see I believe fewer people detained, but it's simply not true that people won't be detained anymore," McConkie said.

Jeffrey Clayton, executive director of the American Bail Coalition, said there are several serious crimes that will allow a person to avoid jail time.

"The question now is what is the detention list and I have obtained a copy and I can tell you that there are going to be some really serious offenders who are not going to be going to jail," Clayton said.

One example is after the Illinois State Police made one of the largest drug busts in its 100-year history in September, when they seized over 5,000 pounds of illegal marijuana near the Quad Cities, a judge allowed two Texas men to go free on pretrial conditions.

Another case involved the robbery of a high-end boutique in Hinsdale where a gang used a sledgehammer to shatter a window before making off with nearly \$70,000 worth of merchandise. Blood was left at the scene, and DNA testing matched the DNA to an individual on parole who was convicted of armed robbery and aggravated battery. The man subsequently was able to walk free without posting bail.

Recently, McHenry County State's Attorney Patrick Kenneally **blasted** the SAFE-T Act on social media, highlighting non-detainable offenses like aggravated battery and strangulation, and said the law is a "far cry from being safe."

Since the Pretrial Fairness Act went into effect in September, some Illinois counties are grappling with meeting the demands of the new law due to a lack of resources in rural areas. McConkie admits that the SAFE-T Act and some of its provisions are a work in progress.

"Illinois is going farther than any other state in the country on this and it's quite a large experiment with quite a large state criminal justice system, but I think evidence from other jurisdictions is encouraging" McConkie said.

Stateline

Cash bail policies are under fresh scrutiny

Some places have done away with the system, while others are considering stricter guidelines.

BY: [AMANDA HERNÁNDEZ](#) - NOVEMBER 13, 2023 5:00 AM



A door displays a sign for bail bond services in Los Angeles. Los Angeles County, the nation's most populous, is one of many jurisdictions working to change its bail protocols. The Los Angeles Superior Court implemented a zero cash bail system in October. Mario Tama/Getty Images

States can't figure out what to do about cash bail.

The system — in which an arrested suspect pays cash to avoid sitting in jail until their court date and gets the money back when they appear — is deeply entrenched in the nation's history as a way to ensure defendants return to face justice.

But cash bail is undergoing a reckoning as policymakers debate its disproportionate effects on underserved communities and people with low incomes who sometimes can't afford bail — as well as just how much the system truly keeps the public safe.

This year some states such as Illinois and jurisdictions such as Los Angeles County in California and Cuyahoga County in Ohio scaled back their bail systems, even eliminating cash bail entirely for low-level offenses in some cases.

Policymakers in other places, meanwhile, are moving in the opposite direction.

Republican lawmakers in at least 14 states — including Georgia, Indiana, Missouri and Wisconsin — introduced about 20 bills this year aimed at increasing the number of non-bailable offenses and either encouraging or requiring judges to consider defendants' criminal records when setting bail, according to analysis by The Associated Press.

And in New York state, where changes to curtail the use of bail took effect in 2020, lawmakers have made several rounds of rollbacks amid concerns about rising crime rates.

Some bail policy advocates argue that these changes may contribute to racial and socioeconomic discrimination by relying on one's ability to post bail and undermine the idea that those accused of a crime are presumed innocent until proven guilty.

“There's no single answer to effective bail reform,” Meghan Guevara, executive partner with the Pretrial Justice Institute, a criminal justice advocacy group, told Stateline.

Measures to increase the use of cash bail or to include certain factors in assessing bail eligibility saw varying levels of success. In Wisconsin, voters approved a state [constitutional amendment](#) in April allowing judges to consider factors such as a defendant's past convictions and the need to protect the public from bodily harm in "violent crime" cases.

Missouri Republican Gov. Mike Parson signed [legislation](#) in July that requires judges who are setting bail to first consider factors such as a suspect's flight risk, potential danger to others, past convictions for violent crimes and previous failures to appear in court.

In Indiana, lawmakers in April [passed their first swipe](#) at [Senate Joint Resolution 1](#), which would amend language in the state's constitution and enable judges to deny bail to those they consider a "substantial risk." The bill must pass again in 2025 before appearing on the ballot in 2026.

In Georgia, lawmakers considered [legislation](#) that sought to impose cash or property bail for dozens of additional crimes, including misdemeanors. It failed due to disagreements between the House and Senate, but Republican state Rep. Houston Gaines, who sponsored the measure in the House, expects the bill to pass in the next legislative session.

Gaines, in an emailed statement, said: "Eliminating cash bail has been a disaster in places it's been tried — even New York has reversed course on some of its radical policies. We can't afford to create a revolving door of criminals who don't show up for court and victimize other individuals." Political backlash and rollbacks

Between 2017 and 2019, a bipartisan movement for changes to bail systems gained momentum at both the local and state levels. Some states, such as New Mexico, New Jersey and Kentucky, sharply curtailed their cash bail systems by almost entirely eliminating cash bail, expanding release programs and moving toward risk-based assessments to determine pretrial release.

In 2020, the COVID-19 pandemic strained crowded jails and detention centers, and agencies eased bail systems to reduce exposure.

Between 2019 and 2020, homicide rates increased 30% — one of the largest year-over-year increases on record, according to data released by the FBI and the federal Centers for Disease Control and Prevention. Homicide gun deaths

also surged 35% in 2020, the largest year-over-year increase recorded in more than 25 years. Despite these increases, the overall violent crime rate in the country did not increase during the pandemic, according to federal crime surveys.

In California and New York, policymakers rolled back their pre-pandemic changes to cash bail.

“Fears about public safety are in many ways greatly overblown and misplaced,” said Sharlyn Grace, a senior policy adviser at the law office of the Cook County Public Defender in Illinois. “It is exceedingly rare for someone who’s released pretrial to be arrested and accused of a new offense that involves violence against another person.”

A [report](#) released by the New York City Mayor’s Office of Criminal Justice in 2021 found that about 95% of individuals arrested and released between January and September 2020 were not rearrested while awaiting trial, and there was a very little difference in rearrest rates before and after bail reform in the state.

It is exceedingly rare for someone who's released pretrial to be arrested and accused of a new offense that involves violence against another person.

– Sharlyn Grace, senior policy adviser at the law office of the Cook County Public Defender in Illinois

New York had passed a sweeping overhaul in 2019, largely ending the use of money bail for misdemeanors and lower-level felonies, with a focus on imposing the “least restrictive” release conditions. The state’s bail law has undergone multiple rounds of revisions since then, primarily driven by calls from Republicans to amend or completely reverse the law.

In early 2020, New York expanded bail options, particularly in cases involving harm to a person or property. In 2022, the state further broadened the definition of “harm” and clarified factors judges must consider, such as criminal history, when setting release conditions.

This year, negotiations over additional changes led to the removal of the requirement for the “least restrictive” release, a proposal [announced](#) by Democratic Gov. Kathy Hochul last spring.

Some state Democrats and criminal justice advocacy groups have strongly criticized these changes, arguing that the most recent revisions represent a rollback in progress.

“These rollbacks have had a serious effect on our pretrial population, and we’re still seeing the same kinds of wealth-based and racial inequities that were the drivers of bail reform in the first instance,” said Jullian Harris-Calvin, the director of the Greater Justice New York program under the Vera Institute of Justice, a national nonprofit criminal justice advocacy group.

Money bail remains prohibited for most misdemeanors and nonviolent felonies in New York, with some exceptions related to rearrested individuals.

In 2018, then-California Gov. Jerry Brown, a Democrat, signed Senate Bill 10 into law, which would have made the Golden State the first to end the use of cash bail for all detained suspects awaiting trials. The American Bail Coalition, a nonprofit trade association representing the bail industry, pushed back hard, organizing Californians Against the Reckless Bail Scheme to lead a repeal effort through a veto referendum.

Voters repealed the measure in 2020. Some who opposed the law said the proposed risk assessment tool — which generally measures factors such as flight risk, public safety risk and criminal history — could potentially cause more harm than good, said Allie Preston, a senior policy analyst for criminal justice reform with the left-leaning policy institute Center for American Progress. Some bail policy advocates say using risk assessment tools in the pretrial process may contribute to more racial and socioeconomic inequities.

Jeff Clayton, the executive director of the American Bail Coalition, said in an interview that risk-based assessments are problematic because “there’s no scientific way to predict pretrial risk in terms of a particular defendant.”

Clayton added that setting a bail amount offers more flexibility, which may be beneficial in some cases.

“The question is, can we engineer the alternate system better than the existing system of monetary bonds, posting bonds and staying in jail that’s existed throughout history?” Clayton said. “There’s reasons to suggest that we can’t do a better job.”

Although statewide change to California’s bail system failed, a few jurisdictions in the state have introduced other changes to their bail systems. Santa Clara County and the city of San Francisco both use risk assessment tools and offer other services to help those released pretrial return for their court dates and address needs, such as transportation.

The Los Angeles County Superior Court implemented a zero cash bail system in October. Under the [new bail protocols](#), those charged with nonviolent or less serious crimes will be detained before arraignment only if a judge determines they present a threat to the community or a potential flight risk instead of whether they are capable of posting bail. In cases of violent and serious felonies, however, the bail system remains intact.

“[Los Angeles County’s new] bail policy is a really important step towards promoting safety and justice and away from a system where the rich are able to buy their freedom and the poor languish in jail,” said Claire Simonich, the associate director of Vera California, an initiative under the Vera Institute of Justice.

Some residents, county officials and members of law enforcement say the new policy will compromise law enforcement’s ability to address crime. And at least a dozen municipalities in Los Angeles County filed a lawsuit in September to block the new system from taking effect.

More legislative efforts

Lawmakers in some states have pushed for further changes in their legislative sessions.

Connecticut state Rep. Steven Stafstrom, a Democrat, said the [problem](#) in his state stems from an outdated constitutional provision that limits the state’s ability to deny bail, primarily reserving bail for capital offenses. But the state abolished the death penalty more than a decade ago. Since capital offenses no longer exist in Connecticut, there are limited legal grounds for holding people pretrial, especially if they have the financial means to post bail.

“We really need to first repeal that provision out of the state constitution and then move much more towards a risk-based system that takes into account someone’s risk and likelihood to flee as opposed to simply their ability to pay,” Stafstrom said in an interview with Stateline.

In Minnesota, a [bill](#) introduced by Democrats this year would limit the use of cash bail by the courts for misdemeanor offenses.

In Cuyahoga County, Ohio, where Cleveland is located, [informal changes](#) to the court’s culture and practices have reduced the number of people required to pay cash bail, according to The Marshall Project, a news outlet focused on criminal justice. The state supreme court also made changes in 2020 and 2021 aimed at reducing the number of people jailed before trial. Last year, voters passed a measure that requires judges to consider certain factors when setting bail, including public safety.

The adoption of alternative approaches, such as pretrial risk assessments, is gaining ground across the country. Some two dozen different risk assessment tools are in use in at least 26 states, according to the [National Conference of State Legislatures](#).

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Daily Journal

Criminal
January 29, 2024

Bail Purgatory in Los Angeles

The recently enacted bail schedule created by LA Superior Court judges began with good intentions, but has had disastrous outcomes.



JEFFREY J. CLAYTON
Executive Director, American Bail Coalition

In a stunning example of good intentions gone seriously wrong, Los Angeles Superior Court judges enacted a new bail schedule last October, ostensibly to protect the poor and indigent. However, the unintended consequences of their actions, contrary to settled law and practice, have unfolded in a manner that inflicts significant harm on these individuals. This has effectively established a bail purgatory from which they cannot escape.

This story began in late 2022, when a national legal non-profit, the Civil Rights Corps, sued the City and County of Los Angeles, along with its officers, challenging the constitutionality of the implemented bail schedule. The legal dispute unfolded as a complex situation where the City, County, and eventually the State of California, represented by Attorney General Rob Bonta, all attempted to distance themselves from responsibility. They pointed out that the judges established policies and procedures relating to the enforcement of the bail schedule and thus they were not the proper parties to defend such procedures.

As a consequence, there was no genuine effort, whether it was right or wrong, to defend the schedule or the process. Notably, the judges themselves did not step forward to advocate for or defend the bail schedule. Nonetheless, in the absence of a strong defense, Judge Lawrence P. Riff held that the bail schedule process was unconstitutional in Los Angeles County.

In cases around the nation, and in opinions from other federal circuits, it is evident that Los Angeles should have been obligated to improve its bail schedule review procedures. This would have entailed having a meaningful evaluation of bail set by the schedule in short order, typically within 24-48 hours, with legal representation to safeguard indigent individuals from potential discrimination.

Smaller cities across America facing similar legal actions have opted to defend these lawsuits and ended up with improved procedures in line with these expectations. Plaintiff lawyers have gone on record that such settlements adhered to constitutional boundaries. However, the Los Angeles Superior Court Judges inexplicably chose to award the plaintiffs more than they would have been granted had the case been actively defended.

And so it came to pass that zero bail rose out of the ashes of failed criminal justice reform policies. It became a part of the new bail schedule which took effect this past Oct. 1 as the solution to a problem that had already been addressed and resolved through more robust due process. In essence, the judges reverted to a zero bail schedule similar to the one defeated in the state legislature, but that also operated during the pandemic. This unnecessary return to zero bail has sparked significant controversy, leading to a legal and political effort by local independent cities to overturn the decision. The concern arises from the fact that, while it does benefit the poor, it inadvertently emboldens repeat offenders by categorizing all members of the class under zero bail as indigent, when only a certain percentage truly fall into that category.

Yet, there is something far more nefarious going on that has flown under the radar. The new zero bail schedule differs from the previous one used during the pandemic because it introduces a third category called "MR," standing for "Magistrate Review."

Consequently, the schedule now comprises three bail categories: those set at \$0, those labeled as "MR" and those assigned a specific dollar amount. These categories align with the judges' classification of crimes into low, medium and high-risk. For low-risk offenses, individuals receive \$0 bail and automatic release. Medium-risk cases undergo "MR," and high-risk offenses entail a specific bail amount.

Unfortunately, the California penal code specifies that judges must assign a specific bail amount for each charge in order to prevent a scenario in which an individual faces no bail at any point during a criminal case. In addition, if judges establish a category requiring individuals to undergo magistrate review before being eligible for bail, it violates equal protection. This is because the highest-risk charges remain bailable without review, while medium-risk charges are never bailable without review. Consequently, the new bail procedure is leaving a considerable number of individuals in jail, awaiting the setting of bail and infringing upon their substantial rights.

It gets worse. Magistrates, when reviewing "MR" cases, have discretion to either order a zero bail or bind the case over for a judge to set a bail. But notably, they do not have the authority to set a bail amount. In the exercise of their discretion, whether opting for zero bail or binding the case over without bail and placing the defendant in bail purgatory with no chance of release, they are expected to consider the evidence. The problem is the hearing to make this determination operates as an ex parte paper review, devoid of legal counsel, and exclusively relies on a pretrial risk assessment. There are no caveats or warnings provided to these magistrates concerning potential limitations associated with such tools. The implementation of pretrial risk assessment tools has drawn much ire from advocates and scholars who generally agree that the perceived benefits do not outweigh the risks, particularly the potential permanent embedding of racial bias into the system.

Moreover, in this new system, pretrial risk assessments hold a dispositive role, despite being intended as evidence specifically required for an ex parte hearing. In practice, magistrates are assigning so much importance to these assessments that they are effectively considered highly conclusive. Even California's Senate Bill 10, which was decisively rejected by voters, did not advocate for such an extensive reliance on a risk assessment regime. Rather, the bill proposed that arguments from counsel and counter-evidence be presented openly in court if the government sought to justify someone's detention without bail based on a pretrial risk assessment algorithm. In this context, any classification beyond low risk would inevitably lead to a situation in which a defendant would be trapped in bail purgatory.

As the debate over zero bail and the arbitrary nature of bail assignments continues, the focus must not shift from the tangible harm inflicted on real people. The unintended consequences of misguided advocacy efforts are evident in the plight of those financially disadvantaged individuals now detained for days without hope of release. It is imperative

to reevaluate the current system and address its flaws, ensuring that justice is not sacrificed in the pursuit of good intentions.

Jeffrey J. Clayton *is executive director of the American Bail Coalition.*

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. He holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.

THE TENNESSEAN

Constitutional change allowing judges in TN to deny bail nears full vote in House, Senate

The proposed amendment passed in key House, Senate committees on Tuesday. But to go before voters in 2026, it must pass the General Assembly again in either 2025 or 2026.



Vivian Jones
Nashville Tennessean

A proposed amendment to the Tennessee Constitution that would give judges discretion to deny bail to defendants charged with certain heinous crimes sailed through key committees in both the House and Senate on Tuesday.

SJR 919/HJR 859, would allow judges to deny bail to defendants charged with terrorism, murder, aggravated rape of a child, aggravated rape, and grave torture. Judges and magistrates would be required to record the reasons for granting or denying bail for such offenses.

Currently, Tennessee judges can only deny bail in first-degree murder cases.

The proposed amendment is on its way to floor votes in both the House and Senate, pending approval by both chambers' calendar committees – typically a scheduling formality. Votes could occur on either chamber's floor as early as Monday.



House and Senate leadership announced the proposed Constitutional amendment last month in Memphis, alongside Memphis Mayor Paul Young and Shelby County District Attorney Steve Mulroy, in an effort to curb crime committed by violent defendants out on bail.

The House Criminal Justice Committee passed the measure on a voice vote. Senate Judiciary Committee members approved it in a vote of 6 to 3, largely along party lines.

Senate Judiciary Committee Chair Todd Gardenhire, R-Chattanooga, voted against the measure, saying that he is concerned about long-term costs to the state.

State fiscal analysts have determined that the amendment itself would not have any financial impact on the state.

But Gardenhire argued that if the amendment is adopted, judges seeking reelection would have no incentive to ever grant defendants bail, causing jails to fill up, and forcing local governments to raise taxes to expand existing jails. The state may even have to build another state prison in the future to accommodate, he said.

“The unintended consequences for this bill is we fill up our jails because there is no judge running for reelection that's not going to throw somebody in jail

without bail. guilty or innocent – before an election,” Gardenhire said. “We're going to have the jails are going to have to release other prisoners in order to make room.”



Jeffrey Clayton, executive director of the American Bail Coalition, testified against the resolution in both committees on Tuesday, criticizing the resolution's current language allowing lawmakers to change the list of crimes affected by the proposed amendment up until Election Day in 2026.

"Tell the people what the categories are, and we'll have a good debate about it," Clayton said.

Clayton also said data is not available to support the notion that pre-trial preventative detention “effectively fights crime.”

Several House Democrats questioned legislative attorneys about the timeline of altering the list of crimes, but there was no extended debate on the issue.

Last week, House Majority Leader William Lamberth, R-Portland, who is helping advance the bill in the lower chamber, called the measure “an important step forward for the safety of this state.”

Rep. Dan Howell, R-Cleveland, noted the case of a Chattanooga man on reduced bond for second-degree murder who committed another violent crime two weeks after his release.

“I think this constitutional amendment is a step in solving the problem,” Howell said.

To amend the state Constitution, proposed amendments must be approved by two separate General Assemblies: first by simple majority, and then again after an election year by two-thirds vote. If approved this year, this proposed amendment would have to be approved in 2025 or 2026 by a two-thirds vote of the legislature before it could appear on the 2026 gubernatorial ballot.

If it does, it would need approval by popular vote of more than half the number of voters participating in the 2026 gubernatorial election.

Melissa Brown contributed.

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[Politics](#)

TN lawmakers mull constitutional amendment that removes the right to bail in cases involving some crimes

Before the state constitution can be amended, the proposal would also need to go through a popular vote.



Author: Chris Salvemini

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NASHVILLE, Tenn. — Tennessee lawmakers are considering whether to change the state's constitution, allowing judges to deny bail for people charged with some crimes as their cases go through the courts.

[SJR 0919](#) was proposed by Sen. Jack Johnson (R - Franklin). The proposal's House counterpart, [HJR 0859](#), was proposed by Speaker Cameron Sexton (R - Crossville). If it passes, people facing some charges may not be allowed to post bail in Tennessee and leave custody as their case goes through the court system.

The types of crimes that would be exempt from bail rights are listed below.

- A capital offense
- An act of terrorism
- Second-degree murder
- Aggravated rape of a child
- Aggravated rape
- Grave torture
- Any other offense for which, as of Nov. 3, 2026, a defendant, if convicted, could not be released prior to the expiration of at least eighty-five percent of the entire sentence imposed.

The current section of the Tennessee Constitution says all prisoners "shall be bailable by sufficient sureties, unless for capital offences, when proof is evident, or presumption great." If the bill passes, judges would be able to choose if a person should be given a chance to post bail rather than people implicitly having the right to it.

The amendment would also include a section that says in cases where bail is granted or denied, either a judge or magistrate would need to record reasons for their decision. It would also keep a part of the state Constitution preserving Habeus Corpus privileges, except for cases involving "rebellion or invasion."

According to the [Tennessee Secretary of State's Office](#), amendments to the state constitution need to go through more than a vote by lawmakers. Amendments must also go through a popular vote and be listed on a ballot before the Constitution can change.

The amendment must get more "yes" votes than "no" votes, and the number of "yes" votes must be a majority of the total votes in the previous gubernatorial election.

"The Constitutional amendment fails if the number of yes votes does not meet or exceed the threshold or if there are more no votes than yes votes," the Secretary of State's Office said.

The proposed amendment passed the Senate Judiciary Committee on Tuesday and is expected to soon be voted on the Senate floor. The House version passed the Criminal Justice Committee on the same day.

In the Senate Judiciary Committee, Johnson said he would hope the amendment would be rarely utilized, since it would be reserved for only extreme crimes.

"In my view, this gives an additional tool in the toolbox of our judges in those most heinous of instances to be able to deny that," said Johnson. "It's my hope that this would be very rarely used because those crimes are not being committed that particularly often."

In the House, Jeffrey Clayton, the Executive Director of the American Bail Coalition, spoke on the bill.

"The history of this Constitutional Amendment lasts for 809 years," he said. "The language in the Tennessee Constitution is called 'The Ancient Rule.' It dates to 1215. That language was written at the Magna Carta ... Really, it's to protect the presumption of innocence."

He also said he wanted the amendment to list the specific crimes that may be excluded from bail rights.

"We think regardless of where you land on this, give voters and the people certainty. And remember, you can't change it after this round, so you gotta get it right the first time," he said.

TENNESSEE | LOOKOUT

Senate Judiciary Chair Todd Gardenhire comes down hard on constitutional bail bill

Chattanooga Republican says amendment will target Shelby County, fill up jails and hurt counties

BY: [SAM STOCKARD](#) - FEBRUARY 21, 2024 5:00 AM



Senate Judiciary Chair Todd Gardenhire slammed a bill to create a constitutional amendment allowing judges to deny bail. (Photo: John Partipilo)

Senate Judiciary Chairman Todd Gardenhire blasted a constitutional amendment to the state's bail law Tuesday, saying it will pack county jails and put local governments in a financial bind.

Senators passed the measure 6-3 but not before the Chattanooga Republican dropped the hammer. The resolution would amend the Constitution by expanding the list of crimes in which judges have discretion to set bail. Under current law, judges have the authority to decline bail only for capital murder.

Gardenhire, who was ill early in the session, prefaced his comments by challenging House leaders who might question whether he is "soft on crime" and noted he was criticized last year. House Speaker Cameron Sexton is sponsoring the House version of the bill and has been outspoken about the need to put constraints on Shelby County and Memphis.

The bill is designed to target Shelby County, Gardenhire said, but he noted he's worried about "unintended consequences," especially for rural counties that might have to raise taxes to expand or build new jails.

"My concern is what judge running for re-election is not going to put somebody away for 100% of the time?" Gardenhire said.



Senate Majority Leader Jack Johnson barely answered questions about jail and prison crowding. (Photo: John Partipilo)

Sarcastically, he noted a group of lawmakers had the “wisdom” in a 2023 special session on public safety to divert \$50 million from a prison construction fund to nonprofit groups working on mental health. It costs about \$600 million to build a state prison.

During debate, Senate Majority Leader Jack Johnson, the bill’s sponsor, barely answered questions about jail and prison crowding by saying he hopes judges will rarely use the discretion they’re given to deny bail, thus tamping down costs.

Yet the measure would enable judges to deny bail on 24 new offenses, mainly violent ones in which 100% of sentences must be served, and another 16 offenses in which 85% of the sentence is mandatory.

“There’s some real expenses the state could probably have to pick up, and I don’t think anybody has the guts to do it,” Gardenhire said.

The bail industry, which is lobbying against the measure, contends Shelby County would wind up with a 320-jail bed shortage and Hamilton County would be 1,249 beds short if this measure is placed in the Tennessee Constitution.

The resolution would have to pass a constitutional majority in this General Assembly and a two-thirds vote in the 114th General Assembly before being placed on the next ballot involving a gubernatorial race, where it must receive a majority vote of those participating in the governor’s election.

Johnson argued that when the state Constitution was ratified, capital offenses included more than first-degree murder.

“Since then, it has denied judges discretion to deny bail for the worst offenses,” Johnson said, including repeat offenders.

The bail industry, though, contends the state doesn't have enough information to determine whether expanding the list of offenses will work.

Jeff Clayton, executive director of the American Bail Coalition, told lawmakers Tennessee is an "ancient rule state," using the bail system that has been in place for 809 years.

"Preserving the presumption of innocence is important," Clayton said.

When it comes to the scourge of violent crime and repeat offenders, bail is not the problem, and amending the state Constitution is not the solution.

– Josh Spickler, Just City Memphis

Likewise, Democratic Sen. London Lamar told the committee "it's dangerous to mess with the Constitution" and noted lawmakers probably will have to repair their error.

"The system is working right now," the Memphis Democrat said. "Judges can set extreme limits on bail."

Lamar said 37% of the Shelby County jail population of 2,300 has no bail or bail amounts of more than \$500,000, making it difficult for people to get out of jail while awaiting court dates.

Josh Spickler, executive director of Just City Memphis, told the Lookout that 612 people were being held Tuesday in the Shelby County jail without bail.

"When it comes to the scourge of violent crime and repeat offenders, bail is not the problem, and amending the state Constitution is not the solution," Spickler said in a statement.

However, House Speaker Sexton, who is driving the constitutional amendment, recently said some people "don't want to admit there's crime happening" in the Memphis area.

Based on TBI figures, he told reporters if Memphis is removed from the state's crime figures for 2022 and 2023, murders, rapes, aggravated assaults, robberies and thefts are down. But in Memphis alone during that time frame, murders are up 50%, rapes 5% and aggravated assaults 3% while robberies are down 8% and thefts are down 10%.

“We have to do a better job of getting the judicial branch in Shelby County-Memphis on board with what the other counties are doing and what the other DAs are doing. It shows what we're doing is working,” Sexton said. “It shows the prosecution and what's happening in Memphis with the judges is not working, and that's what we're fighting right now.”

Sexton did not provide overall crime figures for the state.

The Tennessee Lookout found the number of violent crimes in which a gun was used started increasing in 2013 when the Legislature passed the so-called “guns in trunks” law, then escalated again in 2019 when lawmakers approved the permitless gun carry law, rising to about 17,000 in 2021 before dipping to about 16,000 in 2022.



SAM STOCKARD

Sam Stockard is a veteran Tennessee reporter and editor, having written for the Daily News Journal in Murfreesboro, where he served as lead editor when the paper won an award for being the state's best Sunday newspaper two years in a row. He has led the Capitol Hill bureau for The Daily Memphian. His awards include Best Single Editorial and Best Single Feature from the Tennessee Press Association.

STATE AFFAIRS

House, Senate poised to vote on giving judges more authority to deny bail

PUBLISHED February 21, 2024 by [Andy Sher](#)



Lawmakers attend Gov. Bill Lee's State of the State address on Feb. 5, 2024. (Erik Schelzig)

The full House and Senate are poised to vote on the first step toward putting [a constitutional amendment](#) before the voters that would allow judges to deny bail to defendants charged with the offenses of terrorism, second degree murder, aggravated rape and instances of “grave torture.”

The effort has been championed by House Speaker Cameron Sexton, a Crossville Republican who is seen as a potential 2026 candidate for governor.

Senate Republican leader Jack Johnson, R-Franklin, said the state constitution currently only gives judges the discretion to deny bail first-degree murder cases.

“Expanding the option for a judge to deny bail for violent offenders will help keep our communities safer and also the general public safe,” Johnson said. “Also by keeping individuals charged with violent crimes in custody, there’s a reduced risk of posing a threat to their victims or others in the community.”

“I’m going to try to be kind,” Senate Judiciary Committee Chair Todd Gardenhire, R-Chattanooga, who opposed the measure. “I wouldn’t want to be someone who criticizes me to say I’m soft on crime. My issues are with unintended consequences.”

“My prediction: We’re going to see these jails fill up,” Gardenhire said, warning that rural counties such as several he represents will be forced to raise taxes to enlarge jails and prisons. “Our state jails are overcrowded now.”

Moreover, the lawmaker added, “what judge who is ruling for running for re-election who would not put someone away for 100% of the time.”

Sexton unveiled the constitutional amendment in Memphis, where violent crime is a top concern.

Jeff Clayton with the American Bail Coalition spoke out against the amendment, saying debate on the issue goes back 809 years to England’s Magna Carta 1215.

Clayton said all colonial governments in America restricted the ability to deny bail to capital offenses. Tennessee’s law was lifted from the Pennsylvania Constitution, he said, going on to argue it should be retained “because of the sacred nature of the presumption of innocence.”

If the proposed amendment gets majorities in both chambers this year, it would have to come back and passed again by two-thirds margins in the next two-year session before it could go before the voters.



Friday, April 5, 2024

Do New Laws Seek To Regulate Charitable Bail, Or End It?

By Jack Karp



Sherry Baird, a limo driver from Atlanta, spent nearly a month in jail in 2022 because she couldn't afford the more than \$11,000 bail that was set after she was arrested for suspected drug possession. While a charitable bail fund eventually fronted the money for her release, a recently passed bill in Georgia would severely limit activity by such groups in the future. It's one in a wave of similar laws being considered around the country. (Courtesy of The Bail Project)

When Atlanta limo driver Sherry Baird was arrested in 2022 for allegedly having drugs in her car, she was forced to spend almost a month in jail because she couldn't afford her \$11,200 bail.

While she was incarcerated, her blind dog was removed from her home and put up for adoption by the county. And with little movement on her case ever since — she has yet to be indicted — she would likely still be in jail if The Bail Project, a California-based nonprofit dedicated to providing bail assistance to financially needy defendants, hadn't stepped in to help pay for her release.

Other defendants in similar situations may soon be cut off from that kind of help, though, thanks to legislation waiting to be signed by Georgia Gov. Brian Kemp. The bill, known as S.B. 63, would bar charitable bail funds from paying more than three cash bonds per year in a jurisdiction and require them to meet the same requirements as professional bail bond agencies.

Similar bills aimed at curtailing — some say criminalizing — the use of charitable bail are being considered in multiple states, where advocates for the legislation say it's necessary to keep dangerous criminals off the street.

But bail reform activists say that what the bills really do is perpetuate an inequitable cash bail system that makes freedom dependent on wealth.

"When these states pursue restrictions of charitable bail organizations, without investing in alternatives to cash bail, they're effectively doubling-down on a broken system," said Jeremy Cherson, the director of communications for the Bail Project. "Restricting charitable bail organizations in these circumstances is a bit like closing a food pantry and claiming that you're solving hunger — it's extremely misguided."

Necessary Regulation or a 'Faustian' Bargain?

Charitable bail funds are organizations that pool money from donations to help pay cash bail for jailed defendants who can't afford to either pay bail themselves or to use for-profit bail bond agents.

The National Bail Fund Network currently lists over 90 community bail funds across the country. Those funds often operate locally or focus on helping defendants from a specific community, such as LGBTQ defendants, sex workers, incarcerated mothers or protesters.

Charitable bail organizations can be small initiatives that rely on individual donors or larger organizations that raise millions of dollars. The Bail Project, for instance, received individual contributions totaling over \$5.5 million and foundation grants amounting to \$7.4 million in the fiscal year ending June 30, 2023, according to the group's latest annual report.

They offer an alternative to for-profit bail bond agents, which pay a defendant's bail in exchange for collateral, usually around 10% of the total bail amount. The bail bond agent keeps that fee as compensation even if the defendant goes on to appear in court. If a defendant doesn't show up for court, the bond agent has the authority to arrest the defendant.

Those in the bail bond industry point out that, unlike charitable bail funds, bail bond agents are subject to state licensing requirements and are often regulated by state insurance departments. California bail bond agents, for instance, must complete at least 20 hours of classroom study, pass an exam, take continuing bail education courses, and renew their license every two years.

"The for-profit corporate surety industry is heavily regulated as an insurance product," according to Jeffrey J. Clayton, executive director of the American Bail Coalition, an industry trade group. Similar licensing and basic fiduciary rules for charitable bail would provide accountability and protect the large amount of cash being donated, he added.

But critics of cash bail and for-profit bail bond agents say they prey on desperate people, forcing defendants and their families to choose between predatory lending agreements that can be

financially devastating or allowing their loved ones to remain in jail.

"That's a Faustian bargain," said Cherson.

Ensuring Defendants Show Up for Court

Georgia's proposed law may be "the most draconian" measure that has been floated so far to limit charitable bail, but it's not the only one, according to Cherson.

The Safer Kentucky Act, passed by that state's legislature and sent to the governor to sign on March 28, would, among other things, bar charitable bail funds from paying any bond over \$5,000 or for those accused of certain offenses. It would also subject bail funds to reporting requirements.

Legislation introduced in Tennessee in February would bar court clerks from accepting any cash bail from charitable bail organizations, while bills introduced in Virginia and Washington state in January would apply licensing and reporting requirements to bail funds.

And the Seventh Circuit in August upheld a 2022 Indiana law requiring charitable bail organizations to be certified by the state and making that certification contingent on bail funds denying bail to defendants charged with violent crimes or with past violent crime convictions.

According to Georgia Republican state Sen. Randy Robertson, who introduced that state's legislation, the bills are necessary to ensure that defendants show up to court. He told Law360 in an interview that part of his state had seen a "tremendous amount" of defendants who fail to appear for their court dates.

Unlike traditional bail agents, charitable bail funds aren't required to monitor defendants to ensure they attend their hearings, explained Republican Virginia state Del. Wren Williams, who sponsored that state's H.B. 846.

"The charitable bail funds operate by posting bail and washing their hands of the matter. They don't seem interested in whether a defendant will return for their court date," Williams said.

Supporters of multiple states' efforts to limit charitable bail also say the bills will address rising crime rates and the frequency with which dangerous criminals are being released from jail.

As an example, Washington State Sen. Mike Padden, a Republican representing the Spokane area, has pointed to a suspect with eight previous felony convictions who went on to shoot a state trooper after being bailed out of a Washington state jail, where he was being held on charges of possessing a stolen vehicle and obstructing a law enforcement officer, by a community bail fund.

"There are now more criminals on the street than ever in recent history, and irresponsible bail funds are exacerbating the problem and decreasing public safety in the name of social justice," Padden said in a March statement.

Requiring charitable bail funds to adhere to the same regulations that govern bail bonds agents also protects those funds' donors and provides accountability, according to the bills' supporters, who point out that the for-profit bond industry is heavily regulated.

"It ensures integrity as to the handling of donor and client moneys, guarantees proper governmental oversight and transparency, and makes certain that the people being offered charitable bail are truly in need of aid," said Clayton.

Wren in Virginia put it more bluntly.

"They're selling get out of jail free cards to anyone and everyone including those who intend to continue to do harm to our communities," Wren said. Limiting the use of charitable bail "is a much-needed change to help keep our communities safer."

'Doubling Down' on a Broken System

But critics say that what these bills really do is ensure that more poor people sit in jail while awaiting trial.

Cherson said that "doubling down" on an inequitable and broken system will subject more people to unnecessary incarceration, keeping them from going to work, caring for their children or paying their bills.

"Their families and loved ones will be forced to go to predatory, for-profit bail bonds agents who charge them fees that they can barely afford and force them into predatory lending agreements," Cherson said. "They'll agree to hostile lending terms that will throw them deeper into debt."

The instability that extended jail stays can create in the lives of defendants and their families' lives actually harms public safety, explained Cherson, citing 2013 research by the Laura and John Arnold Foundation showing that just 48 hours of incarceration increases a person's likelihood of being arrested again in the future.

"Sometimes, just that brief period is enough to throw one's life into disarray — to threaten the tenuous hold someone has on a new job or their ability to make that month's rent," he said.

Cherson also pushed back on the idea that defendants whose bail is paid by charitable funds are less likely to show up in court, pointing out that 91% of the nearly 30,000 people The Bail Project has helped have returned for their court dates.

New limits on charitable bail funds also threaten to exacerbate overcrowding in jails, according to Chanelle Helm, core lead organizer of Black Lives Matter Louisville, who works with the Louisville Community Bail Fund.

"Our jails are overpopulated daily, and many of those people are not violent crime offenders, which is really frustrating to us," Helm said, adding that a lot of incarcerated defendants also have physical or mental health issues, and often can't get the care they need in jail.

Helm also questioned the motivations behind the bills, suggesting they were really aimed at silencing protesters who can sometimes wind up behind bars for their activities only to be bailed out by community bail funds.

Georgia's bill, critics have noted, was passed in the wake of long-running protests against a proposed Atlanta police training facility, labeled by its opponents as "Cop City." And Helm said that Kentucky's bill came partly in response to Black Lives Matter protests.



Georgia state Sen. Randy Robertson, the Republican lawmaker who sponsored a recently passed bill that would limit the activities of charitable bail funds, speaks at the Georgia State Capital in Atlanta in February 2023. (Matthew Pearson/WABE via AP, File)

Robertson, who sponsored Georgia's bill, seemed to acknowledge the protests are one driver of the legislation, saying that he's seen protesters come into the state, intentionally get arrested and then be bailed out by organizations endorsing their protest.

"There's always concerns when individuals travel and come into the state in order to commit these acts and then have somebody step up and pay the cash as to whether they'll show back up or not," Robertson said.

Finally, Cherson said it doesn't make sense to subject charitable bail organizations to extensive regulation since their work is intended to be temporary.

"It was never our intention to systematize our work or to play some permanent role in the pretrial systems of the places we operate. That's the role of government," Cherson explained. "We advocate for policy changes that strengthen due process and limit or eliminate wealth-based detention, which are policies that, once enacted, will put us out of business."

Courtroom Fights Over Charitable Bail

Fights over the future of charitable bail aren't just taking place in statehouses. They're playing out in courthouses as well.

The Bail Project sued Indiana's insurance commissioner in 2022 over that state's law restricting charitable bail organizations from paying bail for certain defendants.

The Bail Project argued that the law limited its expressive activity, in violation of the First Amendment, since the organization's payment of defendants' bail was a part of its effort to protest the ongoing use of cash bail in general.

The group also alleged that the law violated the 14th Amendment's equal protection clause by restricting its activities while allowing friends, families and churches to pay bail for defendants, and bail agents to post bonds.

The Seventh Circuit upheld Indiana's law in August, however, saying that The Bail Project's activities aren't protected by the First Amendment since those activities can't express an opposition to cash bail without additional explanatory speech.

"On its own, paying bail for a pretrial defendant does not communicate even the most general version of The Bail Project's message — its opposition to cash bail," the panel said. It also rejected the organization's equal protection claim, saying the state has a legitimate interest in regulating pretrial detention.

"The Bail Project's argument that the posting of bail was protected speech strained credibility," said Clayton with the American Bail Coalition. It was "a feeble position to take, considering what the bail insurance industry faces on a day-in, day-out basis."

The Bail Project has found itself on the other side of lawsuits as well.

The parents of 17-year-old Madelynn Troutt sued the organization in 2022 after a defendant it helped release from jail crashed a stolen car into their daughter's vehicle while intoxicated, killing her.

The parents claimed that the organization was negligent in failing to investigate the defendant's criminal history and the likelihood that he might reoffend before posting his bail.

A Kentucky state judge eventually dismissed the suit, though, finding that posting someone's bond doesn't create a duty to investigate their suitability for release or to monitor their activities. But the incident was one of the drivers of the Safer Kentucky Act, whose charitable bail provisions are known as Madelynn's Law.

Legal battles over charitable bail could soon spill into criminal court as well.

In May, three organizers with the Atlanta Solidarity Fund were arrested for money laundering and charity fraud.

Prosecutors say the group, which has paid bail for people arrested during the sometimes violent protests against the so-called "Cop City" facility, is using donated money to fund violent crimes. The group's defenders, though, say the arrests, like the bills restricting charitable bail, are really intended to chill protesters' speech.

"This is part of a broader attempt to intimidate and silence civilians," Cherson said.

More Legislation to Come?

It's too early to tell if more states will follow the lead of Kentucky, Indiana and others that are looking to place limits on charitable bail funds.

But for-profit bail bonds agents are likely lobbying lawmakers to pursue these bills since charitable bail organizations pose "an existential threat" to the bail bond industry, Cherson pointed out.

The American Bail Coalition is in favor of state insurance commissioners or the [Uniform Law Commission](#) devising model legislation to regulate charitable bail, according to Clayton.

"If a uniform charitable bail law could be drafted and the federal government could incentivize states to adopt such a law, I would expect we would get behind such an effort," Clayton said, though he added that his group isn't very involved in that effort beyond being a clearinghouse for information.

But the [American Legislative Exchange Council](#), known for pushing conservative model legislation, is involved in these efforts to draft and enact model legislation, and the American Bail Coalition is one of ALEC's members and has a representative on ALEC's Criminal Justice Task Force, according to the Center for Media and Democracy, a progressive watchdog organization.

The legislation's advocates, meanwhile, insist the only factor driving these bills is rising crime.

In Georgia, Robertson said H.B. 63 was intended to "lower some of the crime rates where these recidivists are just walking in and walking out and going back out on the streets and committing more crimes."

But the bills' opponents say all they'll really do is perpetuate a system that actually harms public safety.

"If we really want to tackle the so-called revolving door of the criminal justice system, we need to do so by investing in the services and community infrastructure that address the root causes of crime in the first place," Cherson said.

--Editing by Emily Kokoll.



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California Underground Podcast: Discussing California Politics Through a Lens of Sanity

Ep. 252 - Tackling Rising Crime Rates in California

California Underground|4/12/2024

Summary

In this episode, Phil and his guest Jeffrey Clayton discuss rising crime rates in blue states, specifically focusing on California. They explore the role of bail in the criminal justice system and its impact on crime rates. They also discuss the effects of Proposition 47, which downgraded certain nonviolent property crimes and drug possession offenses to misdemeanors. The conversation highlights the importance of deterrence and the need to send

a strong message that low-level offenses will not be tolerated. In this conversation, Jeff Clayton discusses the issues surrounding bail reform and its impact on crime rates. He highlights the need for discretion in the criminal justice system and the importance of enforcing the law. The conversation also touches on the role of district attorneys in prosecuting crimes and the significance of local elections. Jeff emphasizes the need for voters to pay attention to who their district attorney is and how their policies can affect crime rates. The conversation concludes with a discussion on the American Bail Coalition and their work in advocating for fair and effective bail policies.

Check out our full site at www.californiaunderground.live

Chapters

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Restore justice, eliminate the 90% bail discount in Colorado | OPINION

By Jeffrey J. Clayton

February 29, 2024



Jeffrey J. Clayton

In the wake of escalating crime rates gripping Colorado, it's abundantly clear targeted policies aimed at repeat violent offenders are indispensable for safeguarding public safety. Research underscores a stark reality: a mere 5% of repeat offenders are responsible for a staggering 60% to 80% of violent crimes in urban areas. As the state grapples with this pressing challenge, it is imperative to adopt strategies grounded in well-established principles of criminal deterrence. Key among these principles is the assurance of swift apprehension and punishment. By steadfastly adhering to these fundamental tenets, Colorado can chart a course to stem the tide of rising crime rates.

In a rare and refreshing display of unity, Colorado House Bill 1284 has been introduced by a bipartisan group of 23 Colorado state senators and representatives. It is a pivotal piece of legislation and represents the most significant proposed reform since the extensive revision of bail statutes in 2013. Moreover, the bill aligns entirely with the strategies implemented by other states to address crime effectively. At its core, it is a simple ban on "get-out-of-jail-free cards" in Colorado, specifically targeting repeat violent offenders. It applies to individuals charged with a crime of violence who either have a prior conviction for a violent offense within the past two years or are currently facing two or more charges related to violent crimes.

Unfortunately, while HB 1284 addresses bail for repeat violent offenders, it overlooks a crucial issue — the longstanding practice of offering a 90% bail discount through the Judicial Department. This scheme, dating back a decade, grants defendants, regardless of their criminal history, the option to pay only 10% of the bail amount upfront, effectively absolving them of the remaining 90% if they fail to appear in court. For example, if a person faces a \$7,500 bond, their friends or family contacting the jail are informed about the 10% cash option, requiring only \$750, plus a processing fee, to be posted. This absolves them of any further liability on the remaining \$6,750 of the bond if the defendant absconds.

Two significant consequences arise from this practice. First, the state's Judicial Branch fails to collect the remaining 90%, resulting in potentially millions of dollars left uncollected over the past decade — money earmarked for restitution and other criminal programs. The state auditor would discover a gold-mine has been lost on both partially secured and unsecured bonds, as no efforts have been made to collect these funds for as long as records have been kept. Second, offering a 90% discount on bail to repeat violent offenders undermines public safety and compromises criminal accountability and deterrence. The lack of a requirement to post 100% bail means bail agents with arrest powers and third parties with financial interests are not incentivized to ensure the defendant's appearance in court, further exacerbating the risk.

Despite being in use for the past 10 years, Colorado's 90% judicial discount bail program has actually long been prohibited by law. Back in the late 1970s, the Denver District Court attempted to introduce a 10 percent bail option. However, the Colorado Supreme Court subsequently ruled judges lacked the inherent authority to implement partially secured bonds in Colorado. If they were to be allowed, that could occur *only by express enactment of the legislature*. But in 2013, an advocate sent a letter to judges arguing recent statutory changes permitted the 10%, despite its express prohibition for more than 35 years. As a result, both courts and sheriffs have adopted this erroneous interpretation of law.

Over the years, the illegality of the program has been highlighted to multiple chief judges, the state court administrator and elected district attorneys. One jurisdiction did make a change a decade ago, but all others have refused to acknowledge the unlawfulness of the 10% option, let alone take any action regarding it. Despite years of evidence, including recorded phone calls by public officials illegally offering the 10% cash option over the phone, the issue persists without resolution.

The only written response I ever received in my own outreach efforts on the issue was several years ago from Denver District Attorney Beth McCann. She recommended addressing the matter with the then-chief judge of the Denver District Court, who, despite demands to cease and desist, chose to ignore the request to stop offering criminals a 90% bail discount. This practice contradicts state statutes and the Colorado Constitution, which mandate "sufficient sureties" secured in the full amount, as permissible under the law.

In the case of *Stack v. Boyle*, the U.S. Supreme Court ruled judges must set an amount of bail that is "reasonably calculated" to ensure the appearance of a defendant in court — and no higher. However, in Colorado's Front Range counties, sheriffs and judges have for the past decade allowed defendants to post 10% of the total amount in

cash with no risk of forfeiture. This, in essence, sets a second bond amount, which is illegal. Having two conflicting bail amounts violates the principle bail must be reasonably calculated to ensure public safety and guarantee a defendant's court appearance.

As Colorado confronts the complex realities of its criminal justice system, it must remain steadfast in its commitment to enact meaningful reforms. The rare bipartisan support for HB 1284 demonstrates concerns regarding public safety and justice transcend political divides. Though the bill represents a crucial step forward in addressing pretrial crime by repeat violent offenders, persistent use of the 90% judicial bail discount program underscores the need for further legislative action. By closing this egregious loophole and conducting a thorough audit of bail practices, the state can reclaim millions of dollars in public funds and restore public trust in the integrity of its justice system. The time for decisive action is now, as Colorado strives to build safer communities and uphold the principles of fairness and accountability for all.

Jeffrey J. Clayton is executive director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative and policy matters. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior presidential management fellow and finalist for the U.S. Supreme Court fellows program.

Tuesday, June 11, 2024

Del. lawmakers advance legislation to reform state's bail system

Hannah Cechini



DELAWARE – Delaware lawmakers are aiming to reform the state's bail system, in the name of equity and public safety. However, opponents to the legislation argue that the rules legislators are considering pave the way for mass incarceration in the First State.

Bail Reform Bills

Those changes would come only with the passage of [Senate Substitute for Senate Bill 11](#), which would pave the way for an amendment to Delaware's constitution.

Bill sponsor and Senate Majority Leader, Senator Bryan Townsend, says lawmakers have already worked to ensure that low-level offenders had the opportunity to make bail. This year's legislation, is the next step, he says; the goal is to ensure that people deemed as a risk to the community cannot be released from jail before trial.

"You shouldn't use bail as a toll to hold them, because that would mean that a poor dangerous person would be held, because they can't make bail, but a wealthy dangerous person, or a member of a cartel, who is a dangerous person could make bail and get out," Sen. Townsend said. "It shouldn't be about whether you have money or not. It should be about whether you're a risk to the community."

[Senate Bill 12 with Senate amendment 1](#), meanwhile, would allow lawmakers to identify while types of felony offenses would make an individual ineligible for bail.

Judges would still be able to use their own discretion in each case, says Sen. Townsend. “They could use bail as a tool, both case and non-monetary, to try to make sure that people attend their court hearings and are not a risk to the community while they’re out,” Sen. Townsend said.

The legislation would also give defendants a pre-trial detention hearing, within ten days of their arrest.

“There are really good procedural protections on this legislation, and funding ultimately for defense counsel,” Sen. Townsend said. “We, frankly, have not heard many examples at all of this system being abused, to the point where people who are not dangerous are being detained with bail.”

Concerns With Changes

However, that’s exactly what opponents of the bill say they’re concerned about.

Jeff Clayton, Executive Director of the American Bail Coalition, believes that the bills go too far, and step on individuals’ rights. He worries that non-violent offenses, like felony theft for example, will get lumped in with crimes like assault, or even murder.

“It’s a significant transfer of state power over individuals to define bail. It’s giving legislature the power to define and detain anyone who’s committed a felony crime in Delaware,” Clayton said.

“Admittedly, they haven’t gone that far yet, but in the federal system that they’re copying, it is a march towards mass incarceration. They will always err on the side of denying bail.”

In other states that have already adopted similar measures, like New Jersey, Clayton says that theory is being proven. “It’s ending up over half of all felonies, the prosecutors are seeking detention,” he said.

Clayton is calling for “more of a hybrid system.”

“The government has mass incarcerated people, it has misused DNA evidence over the years, the government has wrongfully convicted people,” Clayton said. “We just don’t trust it.”
“Bail system has inherent flaws,”

However, lawmakers argue that’s not what they’re aiming for in the First State. Rep. Nnamdi Chukwuocha, who will be pushing the legislation now that it’s been unanimously passed by the Senate, says transparency is the goal.

“It’s just about equity and common sense,” Rep. Chukwuocha said. “We think about our state constitution and some things that need to be changed. This is definitely one of those things.” Rep. Chukwuocha doesn’t foresee much opposition in the House, but has message for other lawmakers in that process:

“The bail system has inherent flaws,” Rep. Chukwuocha said. “The fact that someone rich, regardless of how dangerous they are can get out of prison, and someone who is just as

dangerous, but they don't have money, is being locked up is just not answering the call that we're seeking in our society to be a safer nation."

Fiscal Note, Looking Ahead

There is a fiscal note attached to the legislation. However, Sen. Townsend explains that it will not go into effect for some time. This effort is just the first leg of the required constitutional amendment, he says.

"Next January or March, the legislature would then pass the second leg of the constitutional amendment, and then the new system would not go into effect for another six months after that," Sen. Townsend said. "So, there's no fiscal note for the coming budget year, because it's not possible for a system to go into place in the coming budget year. It would have to be the year that follows."

Because the bills would change the Delaware constitution, they will require two-thirds majority vote in both the Senate and House, but not during the same term. That said, if the two bills do pass during the current session, they would have to pass again, either next year, or in 2026, to become law.

The Washington Post

FACT CHECKER

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Fact-checking the 2024 Trump-Harris debate

Trump, on the defensive, makes four times more suspect claims than Harris over 90 minutes.



Former president Donald Trump and Vice President Kamala Harris at the debate Tuesday in Philadelphia.
(Demetrius Freeman/The Washington Post)

Analysis by Glenn Kessler
September 11, 2024 at 2:43 a.m. EDT

In their first and perhaps only presidential debate in the 2024 election, a defensive former president Donald Trump relied on many of his favorite falsehoods to combat attacks from Vice President Kamala Harris. Harris stretched the truth on occasion, but she was no match in the falsehood department against Trump.

Here's a roundup of 55 claims that caught our interest, in the order in which they were made. (In some cases we have grouped similar Trump statements together.) As is our practice, we do not award Pinocchios when we do a roundup of facts in debates.

“Economists have said that that Trump sales tax would actually result, for middle-class families, in about \$4,000 more a year.”

— Harris

This may be a high estimate. Trump suggested he wants to impose a 10 percent tax on every imported good entering the United States and a 60 percent tax on every imported good from China. The pro-trade Peterson Institute for International Economics has estimated that this would cost a typical U.S. household in the middle of the income distribution about \$1,700 in after-tax income. That's because tariffs are typically passed on to consumers by importers — a standard economic concept that Trump rejects.

But in one recent campaign rally, Trump mused that he would impose a 20 percent tariff. Peterson redid the numbers and estimated this would cost that typical household more than \$2,600 a year.

Harris is relying on an estimate from the left-leaning Center for American Progress Action Fund, which calculates the cost would be \$3,900.

But economist Kimberly Clausing, co-author of the Peterson study, says these studies are underestimates because they do not consider the increase in the price of goods that compete with imports. “We have every reason to think U.S. domestic prices would rise in those sectors that compete with imports,” and “that effect is very large,” she said in an email. “The true cost I’d guess is roughly twice as high as our number.”

“I have no sales tax. That’s an incorrect statement. She knows that we’re doing tariffs on other countries. Other countries are going to finally, after 75 years, pay us back for all that we’ve done for the world, and the tariff will be substantial in some cases.”

— Trump

Trump is flat wrong to claim that the entire tariff is paid by a foreign country. There is no controversy among economists, who agree that tariffs — essentially a tax on domestic consumption — are paid by importers, such as U.S. companies, which in turn pass on most or all of the costs to consumers or producers who may use imported materials in their products. As a matter of demand and supply elasticities, overseas producers will pay part of the tax if there are fewer goods sold to the United States. Domestic producers in effect get a subsidy because they can raise their prices to the level imposed on importers.

Through the end of his presidency, Trump-imposed tariffs garnered about \$75 billion on products from China. So, ultimately, Americans footed the bill for Trump's tariffs, not the Chinese. Moreover, the China tariff revenue was reduced by \$28 billion in payments the government made to farmers who lost business because China stopped buying U.S. soybeans, hogs, cotton and other products in response.

“I had tariffs, and yet I had no inflation. ... I had no inflation, virtually no inflation. They had the highest inflation perhaps in the history of our country because I’ve never seen a worse period of time.”

“We have inflation like very few people have ever seen before, probably the worst in our nation's history.”

— Trump

Biden did not have the highest inflation in U.S. history. Inflation spiked to 9 percent in mid 2022, a 40-year-high, but is now below 3 percent. (For all of 2022, inflation was 6.5 percent.) Inflation was 12.5 percent in 1980, 13.3 percent in 1979 and 18.1 percent in 1946 — and many other years were higher than 6.5 percent.

Higher prices for goods and services would have happened no matter who was elected president in 2020. Inflation initially spiked because of pandemic-related shocks — increased consumer demand as the pandemic eased and an inability to meet this demand because of supply-chain problems, as companies reduced production when consumers hunkered down during the pandemic. Indeed, inflation rose around the world — with many peer countries doing worse than the United States — because of pandemic-related shocks that rippled across the globe.

“We have millions of people pouring into our country from prisons and jails, from mental institutions and insane asylums.”

— Trump

This is poppycock. Immigration experts know of no effort by other countries to empty their prisons and mental institutions. As someone who came to prominence in the late '70s and early '80s, Trump appears to be channeling Cuban leader Fidel Castro's 1980 Mariel boatlift. About 125,000 Cubans were allowed to flee to the United States in 1,700 boats — but there was a backlash when it was discovered that hundreds of refugees had been released from jails and mental health facilities.

Helen Fair, research associate at the Institute for Crime & Justice Policy Research in Britain, which tracks the world prison population (except for a handful of countries), says the numbers keep growing. In 2013, 10.2 million people were in prison globally — and that had grown to 10.77 million in 2021. A preliminary estimate for February 2024, not ready to be published, indicates the population has grown even more. “In short, I would disagree with Donald Trump's assertion,” she said.

“You look at Springfield, Ohio, you look at Aurora in Colorado. They are taking over the towns. They're taking over buildings. They're going in

violently. ... They're at the highest level of criminality, and we have to get them out."

"A lot of towns don't want to talk about it because they're so embarrassed by it. In Springfield, they're eating the dogs. The people that came in, they're eating the cats. They're eating, they're eating the pets of the people that live there."

— Trump

Trump is channeling right-wing social media sensations. On Springfield, Trump is referencing a ridiculous social media hoax, supposedly centered on Haitian immigrants eating cats and other animals, that has spawned thousands of memes across right-wing social media. There is no evidence that Haitians are doing this. As for Aurora, police in this Denver suburb say this claim is false — a Venezuelan gang has not taken over an apartment complex.

"I'm not saying that there's not gang members that don't live in this community, but what we're learning out here is that gang members have not taken over this complex," Heather Morris, the interim police chief in Aurora, said in a recent video taped outside the complex.

Some tenants held a news conference recently and also disputed the notion that the gang had taken over the complex. Instead, they said, the problem was that the apartment block had fallen into disrepair and was infested with bedbugs, cockroaches and rats.

"I created one of the greatest economies in the history of our country. ... We had the greatest economy."

— Trump

This is false. Before the coronavirus pandemic shuttered businesses and sent unemployment soaring, the president could certainly brag about the state of the economy in his first three years. But he ran into trouble when he made a play for the history books to say it was the best economy in U.S. history. By just about any important measure, the economy under Trump did not do as well as it did under Presidents Harry S. Truman, Lyndon B. Johnson or Bill Clinton.

The gross domestic product grew at an annual rate of 2.3 percent in 2019, slipping from 2.9 percent in 2018 and 2.4 percent in 2017. But in 1997, 1998 and 1999, GDP grew 4.5 percent, 4.5 percent and 4.7 percent, respectively. Yet even that period paled in comparison with the 1950s and 60s. Growth between 1962 and 1966 ranged from 4.4 percent to 6.6 percent. In postwar 1950 and 1951, it was 8.7 percent and 8 percent, respectively. Meanwhile, the unemployment rate reached a low of 3.5 percent under Trump, but it dipped as low as 2.5 percent in 1953.

"What you're going to hear tonight is a detailed and dangerous plan called Project 2025, that the former president intends on implementing if he were elected."

— Harris

“I have nothing to do as you know, and as she knows better than anyone, I have nothing to do with Project 2025 that’s out there.”

— Trump

Project 2025 is not an official campaign document, and we’ve called out Democrats for sometimes falsely suggesting policies that are not in it, such as on Social Security and the definition of family. But there are definitely Trump connections.

A CNN review found that 140 people who worked in the Trump administration contributed to the report. In April, at an event for the Heritage Foundation, which produced the document, Trump praised Kevin Roberts, its president, and appeared to endorse Project 2025. “They’re going to lay the groundwork and detail plans for exactly what our movement will do and what your movement will do when the American people give us a colossal mandate to save America,” he said.

“We handed them over a country where the economy and where the stock market was higher than it was before the pandemic came in.”

— Trump

Trump is right on stock, wrong on economy. The Dow Jones Industrial Average was at 29,440 on Feb. 14, 2020, before markets swooned over the pandemic, and had risen to 31,198 by the day President Joe Biden took office. But the unemployment rate was 3.5 percent in February 2020 — and 6.4 percent in January 2021.

“What Goldman Sachs has said is that Donald Trump’s plan would make the economy worse. Mine would strengthen the economy. What the Wharton School has said is Donald Trump’s plan would actually explode the deficit. Sixteen Nobel laureates have described his economic plan as something that would increase inflation and, by the middle of next year, would invite a recession.”

— Harris

Harris’s citations are correct. Wall Street firm Goldman Sachs issued a report saying the economy would shrink because of Trump’s trade and immigration policies. The Penn Wharton Budget Model concluded that Trump’s policies would add \$5.8 trillion in deficits over 10 years. (Harris did not mention that Penn Wharton says her policies would add \$1.2 trillion to the deficit.) Sixteen Nobel Prize-winning economists wrote in June, before Biden dropped out of the race, that Trump’s plans could “reignite this inflation.”

“I went to the Wharton School of finance, and many of those professors, the top professors, think my plan is a brilliant plan.”

— Trump

We couldn’t identify any. One Wharton professor posted on X during the debate: “Hi! @wharton Prof here. Show me the many colleagues who say Trump’s plan is any good? I count 0!” (The post was later deleted.) The Trump campaign did not respond to a request for names.

“She’s a Marxist. Everybody knows she’s a Marxist. Her father’s a Marxist professor in economics, and he taught her well.”
— Trump

This is a ridiculous slur. There is no evidence Harris is a Marxist; her economic proposals are generally middle-of-the-road Democratic ideas. She’s been endorsed by more than 90 current and former chief executives of major companies.

There is an element of truth about her father’s academic interests. Donald J. Harris, a professor emeritus of economics at Stanford University, was the first Black person to receive tenure in Stanford’s economics department and was regarded as a prominent critic of mainstream economic theory from the left.

The Stanford Daily, in 1976, described him as a “Marxist economist” who “taught ‘bad’ courses too well.” The newspaper said there had been opposition to granting him tenure because he was “too charismatic, a pied piper leading students astray from neo-Classical economics.”

But there’s no indication that Harris’s father’s research interest has had any impact on her thinking. Harris’s parents divorced when she was a child, and she has had a strained relationship with her father.

“When you look at these millions and millions of people that are pouring into our country monthly, where it’s, I believe, 21 million people, not the 15 that people say, and I think it’s a lot higher than the 21 that’s bigger than New York State pouring in.”
— Trump

This is false. Here, he manages to take a real number — about 5 million migrants arriving during Biden’s presidency — and increase it fourfold. Then he offers a prediction to make it sound even larger.

Here’s the reality: Customs and Border Protection recorded about 10 million “encounters” between February 2021, after Biden took office, through July. But that does not mean all those people entered the country illegally. Some people were “encountered” numerous times as they tried to enter the country — and others (more than 4 million of the total) were expelled, mostly because of covid-related rules that have since ended.

CBP has released more than 3.2 million migrants into the United States at the southern border under the Biden administration through April, the Department of Homeland Security said. These numbers, however, do not include “gotaways” — which occur when cameras or sensors detect migrants crossing the border but no one is found or no agents are available to respond. That figure could add an additional 2 million, bringing the total number of migrants arriving during Biden’s presidency to around 5 million.

That’s a big number, but apparently not big enough for Trump.

“And you can look at the governor of West Virginia, the previous governor of West Virginia, not the current governor, is doing an excellent job. But the governor before he said, the baby will be born and we will decide what to do with the baby. In other words, will execute the baby. And that’s why I did that, because that predominates, because they’re radical.”

“Just look at the governor, former governor of Virginia, the governor of Virginia said, we put the baby aside and then we determine what we want to do with the baby.”

— Trump

This is false. Trump once again grossly mischaracterizes remarks by former Virginia governor Ralph Northam (D), a physician. Earlier in the debate, he mistakenly called him the governor of West Virginia but then correctly identified him later in the debate.

Northam told a radio show in 2019 that late-term abortion procedures are “done in cases where there may be severe deformities. There may be a fetus that’s not viable. So in this particular example, if a mother’s in labor, I can tell you exactly what would happen. The infant would be delivered, the infant would be kept comfortable, the infant would be resuscitated if that’s what the mother and the family desired. And then a discussion would ensue between the physicians and the mother.” Critics suggested the governor was endorsing infanticide. His office later said Northam was referring to medical treatment, not ending the life of a baby.

“Her vice-presidential pick says abortion in the ninth month is absolutely fine. He also says, ‘execution after birth’ — execution, no longer abortion because the baby is born — is okay.”

— Trump

This is false. Walz has not said this, and “execution after birth” is illegal in all states.

This is a common Republican talking point — that Democrats support nationwide abortion on demand up until the moment of birth. The implication is that late-term abortions are common — and that they are routinely accepted by Democrats.

The reality, according to federal and state data, is that abortions past the point of viability are extremely rare. When they do happen, they often involve painful emotional and even moral decisions.

About two-thirds of abortions occur at eight weeks of pregnancy or earlier, and nearly 90 percent take place in the first 12 weeks, or within most definitions of the first trimester, according to estimates by the Guttmacher Institute, which favors abortion rights. About 5.5 percent of abortions take place after 15 weeks, with just 1.3 percent at 21 weeks or longer.

“Every legal scholar, every Democrat, every Republican, liberal, conservative, they all wanted this issue [abortion] to be brought back to the states where the people could vote.”

— Trump

This is absurd. The docket for *Dobbs v. Jackson Women's Health Organization*, the case in which the right to abortion was overturned, is filled with briefs from legal scholars saying it would be a mistake to overturn decades of legal precedent.

"I have been a leader on fertilization, IVF [in vitro fertilization]."
— Trump

This is in conflict. The Republican Party platform, which Trump points to as his true policy document instead of Project 2025, supports states establishing fetal personhood through the Constitution's 14th Amendment. Fetal personhood bestows the same rights currently reserved for people to embryos from the moment of fertilization, which in effect would make IVF illegal.

"Understanding his Project 2025, there would be a national abortion, a monitor that would be monitoring your pregnancies, your miscarriages."
— Harris

That's not exactly what Project 2025 says. Claiming that liberal states have become "sanctuaries for abortion tourism," the report says the Department of Health and Human Services "should use every available tool, including the cutting of funds, to ensure that every state reports exactly how many abortions take place within its borders, at what gestational age of the child, for what reason, the mother's state of residence, and by what method. It should also ensure that statistics are separated by category: spontaneous miscarriage; treatments that incidentally result in the death of a child (such as chemotherapy); stillbirths; and induced abortion. In addition, CDC should require monitoring and reporting for complications due to abortion and every instance of children being born alive after an abortion."

"They allowed terrorists. They allowed common street criminals. They allowed people to come in, drug dealers to come into our country. And they're now in the United States and told by their countries like Venezuela, don't ever come back, or we're going to kill you. Do you know that crime in Venezuela and crime in countries all over the world is way down?"
— Trump

This is false. There is no reliable data on crime in Venezuela — the government stopped publishing official data in 2015 — but at campaign rallies, Trump says crime has dropped "a staggering 67 percent" in Venezuela, while at other times he has put the drop in crime at "72 percent in a year." It's unclear where Trump gets these numbers. But they're higher than what even the government says. In May, Venezuelan security officials announced that crime indicators had fallen by 25.1 percent compared with 2023, claiming that security forces had been successful in large-scale operations against criminal groups. Some experts say the impossible-to-verify numbers are intended to boost the sagging popularity of Nicolás Maduro's government.

"Crime is down all over the world except here. Crime here is up and through the roof. Despite their fraudulent statements that they made."

Crime in this country is through the roof. And we have a new form of crime.”

— Trump

“The FBI defraud. They were defrauding statements. They, they didn’t include the worst cities. They didn’t include the cities with the worst crime.”

— Trump

This is false. Violent crime rates, especially for homicide in large cities, have fallen sharply during Biden’s presidency, after a surge during the pandemic. The violent crime rate is believed to be near its lowest level in 50 years.

Trump has a point that the quarterly data released in June by the FBI is incomplete — not every law enforcement agency reports its data on time or accurately for the report — but he’s wrong to suggest crime is worse today than at any time in American history. Jeff Asher, a crime analyst and consultant, maintained a dashboard that compiles crime statistics, and it shows the murder rate declining significantly, year over year, in many major cities. Overall, there have been nearly 18 percent fewer murders in 277 cities, according to Asher.

The Council on Criminal Justice examines monthly crime rates for 12 violent, property and drug offenses in 39 American cities that have consistently reported monthly data over the past six years. In July, it reported steep declines in homicide and most other violent crimes back to levels that predated the pandemic.

To back up Trump’s claims of rising crime, his campaign likes to point to the 2022 National Crime Victimization Survey (NCVS), a household survey of respondents age 12 and older. For the period of July 2021 to November 2022, it showed a sharp increase in violent crime and an unusual discrepancy with the FBI reports, which are crimes reported to 80 percent of the nation’s law enforcement agencies by the public. As a household survey, the NCVS is incomplete. It does not include people who are homeless or in institutions such as prisons, jails and nursing homes; it also does not include crimes against people younger than 12. The victimization survey also excludes murders.

Moreover, crime trends of a single year are almost meaningless. Both the NCVS and the FBI show violent crime has dropped significantly since the early 1990s.

“It [the crime data] was a fraud. Just like their number of 818,000 jobs that they said they created turned out to be a fraud.”

— Trump

This is false. Trump can offer no evidence for this claim. The Bureau of Labor Statistics is a nonpartisan agency — only the commissioner is a political appointee — that is responsible for data that depicts the health of the economy and labor markets. It collects data from a variety of sources and routinely updates statistics as more data is received. In August, the BLS announced a preliminary estimate that the number of jobs created over the 12 months ending in March would probably be adjusted downward —

818,000 lower than the original estimate of 2.9 million jobs. A final estimate will be released in February.

This was an unusually large adjustment of minus-0.5 percent, which the BLS acknowledged. But there was a similar adjustment in Trump's presidency (minus-0.3 percent, or 514,000 jobs, in March 2019) and in Barack Obama's presidency (minus-0.7 percent, or 902,000 jobs, in March 2009). The BLS relies on a survey of about 119,000 employers to produce its monthly estimates of job creation but adjusts the figures every year after examining annual state unemployment insurance tax filings.

“The former vice president [sic] called for defunding federal law enforcement. 45,000 agents, get this, on the day after he was arraigned on 34 felony counts.”

— Harris

This is correct. In a post on Truth Social on April 5, Trump said (in all caps): “Republicans in Congress should defund the DOJ and FBI until they come to their sense.”

“They weaponized the Justice Department. ... They used it to try and win an election. ... They have fake cases.”

— Trump

False. “Weaponized” is Trump's code for the Biden administration supposedly using the resources of the U.S. government to target his political opponent. There is no evidence that Biden or Harris directed the Justice Department or local prosecutors to pursue prosecutions of Trump.

“Joe Biden was found essentially guilty on the documents case.”

— Trump

This is false. Trump faced a criminal trial (now on hold) for hoarding classified documents after he left office and refusing to return them. But Biden also discovered that he had retained classified documents at his home and office. He returned them, but a special counsel was appointed to see whether he, too, should face criminal charges. The special counsel, Robert K. Hur, concluded that it would be tough to win a case — because Biden had reasonable defenses, the facts were occasionally murky and Biden (unlike Trump) had cooperated fully with the investigation.

Hur made the point that, if a case were brought to trial, Biden could make a credible case that he had not willfully retained the documents, especially because he cooperated. In many cases, the special counsel decided that the documents were mishandled by mistake — or were not especially important anymore, despite the classification level.

“Let's talk about fracking because we're here in Pennsylvania. I made that very clear in 2020, I will not ban fracking. I have not banned fracking as vice president of United States. And in fact, I was the tiebreaking vote on the Inflation Reduction Act, which opened new leases for fracking.”

— Harris

This is spin. What Harris said in the vice-presidential debate in 2020, “Joe Biden will not ban fracking. He has been very clear about that.” Later in the debate, she reiterated that “the American people know that Joe Biden will not ban fracking. That is a fact. That is a fact.”

In other words, Harris was stating Biden’s position — but not making clear her own. When she was still running for president months earlier, Harris took a firm stand against fracking.

Asked in a recent CNN interview why she had changed her position, Harris responded: “What I have seen is that we can — we can grow and we can increase a thriving clean energy economy without banning fracking.” As vice president, she cast the tiebreaking vote for the Inflation Reduction Act, a bill that included many green-energy incentives but also increased leases for fracking.

“The values I bring to the importance of homeownership, knowing not everybody got handed \$400 million on a silver platter and then filed bankruptcy six times.”
— Harris

“I wasn’t given \$400 million. I wish I was. My father was a Brooklyn builder, a Brooklyn, Queens, and a great father, and I learned a lot from him. But I was given a fraction of that, a tiny fraction, and have built it into many, many billions of dollars, many, many billions.”
— Trump

It depends on inflation. In 2018, an investigation published in the New York Times revealed that Trump had received \$413 million in inflation-adjusted dollars from his father. (In 2024 dollars, the value grows to \$525 million.)

For many years, as we have detailed, Trump had falsely claimed the only thing he received was a \$1 million loan from his father. That was never credible. He benefited from numerous loans and loan guarantees, as well as his father’s connections, to build his real estate business in Manhattan. His father also set up lucrative trusts to provide steady income. When Donald Trump became overextended in the casino business, his father bailed him out with a shady casino-chip loan — and Trump also borrowed \$9 million against his future inheritance.

“Defund the police. She’s been against that forever.”
— Trump

Trump, in his clumsy phrasing, got this right — Harris has never supported defunding the police.

“She went out in Minnesota and wanted to let criminals that killed people that burned down Minneapolis. She went out and raised money to get them out of jail.”
— Trump

This needs context. Until the 2020 killing of George Floyd in police custody, the Minnesota Freedom Fund (MFF) was a relatively small vehicle for assisting people who needed cash for bail. Just weeks after Floyd's death, it raised an astonishing \$35 million, in part because of a tweet by Harris, who at the time was a senator for California lending her name to a fundraising effort.

It turned out that few people involved in the protests needed the MFF's help to get out of jail. According to an accounting by the American Bail Coalition, verified by The Fact Checker with a review of Hennepin County jail records, all but three of the 170 people arrested during the protests between May 26 and June 2, 2020, were released from jail within a week. Of the 167 released, only 10 had to put up a monetary bond to be released; in most cases, the amounts were nominal, such as \$78 or \$100. In fact, 92 percent of those arrested had to pay no bail — and 29 percent of those arrested did not face charges.

But there have been some instances of the MFF assisting people accused of serious crimes after they were released, including murder, attempted murder and third-degree assault. The man accused of murder had been jailed originally on an indecent-exposure charge, which called for bail of \$2,000.

“If she won the election, the day after that election, they’ll go back to destroying our country, and oil will be dead, fossil fuel will be dead. We’ll go back to windmills, and we’ll go back to solar, where they need a whole desert to get some energy to come out.”

— Trump

This is false. Domestic oil production and natural gas production already hit record highs under Biden in December, according to the Energy Information Administration. There was a slight dip in January because of production issues, but the EIA projects the December production levels will be sustained through the rest of 2024.

“When are those people going to be prosecuted? When are the people that burned down Minneapolis going to be prosecuted, or in Seattle, they went into Seattle, they took over a big percentage of the city of Seattle.”

— Trump

This is false. People were prosecuted in Seattle and Minneapolis.

In Seattle, two people were killed, according to the Armed Conflict Location and Event Data project (ACLED), a nonprofit. Summer Taylor, a Black Lives Matter activist, died when a car rammed into the protests. Another person, 16-year-old Antonio Mays Jr., was shot in an incident that ACLED said was tied to the broader unrest. (Another fatal shooting of a teen was not connected, ACLED concluded.) Dawit Kelete, 30, who drove into the protest on July 4, 2020, killing Taylor and seriously injuring another person, was sentenced to 78 months in jail. The judge said that while there was no evidence he hit the protesters intentionally, his conduct was “extremely reckless.”

Mays died in the early morning of June 29, 2020, while driving a stolen Jeep in Seattle's Capitol Hill Organized Protest zone, which protesters occupied for three weeks after police abandoned the area. No one has been charged in Mays's death.

In Minneapolis, one person was killed, according to ACLED. The Max It Pawn Shop was set on fire during protests on May 28, 2020, and then two months later, police discovered a charred body in the wreckage. Surveillance video footage showed Montez Terriel Lee, 26, pouring an accelerant around the pawn shop and lighting it on fire. Lee was sentenced to 10 years in prison, to be followed by three years of supervised release, the Justice Department said.

“I said, ‘I’d like to give you 10,000 National Guard or soldiers.’ They rejected me. Nancy Pelosi rejected me.”

— Trump

This has been repeatedly debunked. Trump and his allies have invented the claim that he requested 10,000 troops before the Jan. 6, 2021, attack on the Capitol, twisting an offhand comment into a supposed order to the Pentagon. A Colorado judge considered testimony in November on this point and dismissed a Trump aide's account as “incredible” and “completely devoid of any evidence in the record.”

In 2021, we explored this claim twice and debunked it, each time awarding Four Pinocchios. Then, in late 2022, the Jan. 6 committee released its report and dozens of transcribed interviews that provided new details on the meetings in which Trump claims he requested troops at the Capitol.

That report underscored how Trump has little basis to make this claim, saying that he brought up the issue on at least three occasions but in such vague and obtuse ways that no senior official regarded his words as an order.

Moreover, the committee said that when he referenced so many troops, it was not because he wanted to protect the Capitol. He “floated the idea of having 10,000 National Guardsmen deployed to protect him and his supporters from any supposed threats by left-wing counter protesters,” the report said.

“Let’s remember Charlottesville, where there was a mob of people carrying tiki torches spewing antisemitic hate. And what did the president then at the time say? ‘There were fine people on each side.’”

— Harris

Trump’s meaning is in dispute. The march on Charlottesville by white supremacists in August 2017 — and Trump’s response to it — was a central event of his presidency. Over the course of several days, Trump made a number of contradictory remarks, permitting both his supporters and foes to create their own version of what happened.

Biden has frequently claimed that Trump said the white supremacists were “very fine people.” But the reality is more complicated. Trump was initially criticized for not speaking more forcefully against the white nationalists on the day of the clashes, Aug. 12. Then, in an Aug. 14 statement, Trump condemned right-wing hate groups — “those

who cause violence in its name are criminals and thugs, including the KKK, neo-Nazis, white supremacists, and other hate groups that are repugnant to everything we hold dear as Americans.”

But Trump muddied the waters on Aug. 15, a day later, by also saying: “You had people — and I’m not talking about the neo-Nazis and the white nationalists — because they should be condemned totally. But you had many people in that group other than neo-Nazis and white nationalists.” It was in this news conference that he said: “You had some very bad people in that group, but you also had people that were very fine people, on both sides.”

Trump added: “There were people in that rally — and I looked the night before — if you look, there were people protesting very quietly the taking down of the statue of Robert E. Lee. I’m sure in that group, there were some bad ones.”

The problem for Trump is that there was no evidence of anyone other than neo-Nazis and white supremacists in the Friday night rally on Aug. 11. He asserted there were people who were not alt-right who were “very quietly” protesting the removal of Lee’s statue.

It’s possible Trump became confused and was really referring to the Saturday rallies. But that’s also wrong. A Fact Checker examination of videos and testimony about the Saturday rallies found that there were white supremacists, there were counterprotesters — and there were heavily armed anti-government militias who showed up on Saturday. The evidence shows there were no quiet protesters against removing the statue that weekend.

“And be clear on that point, Donald Trump, the candidate, has said in this election there will be a bloodbath if ... the outcome of this election is not to his liking.”

— Harris

Trump is being quoted out of context. Harris suggests Trump said there would be a “bloodbath” if he lost the election. But in a March 16 rally, Trump used the word when talking about the impact of Chinese electric vehicles on the U.S. auto industry.

“China now is building a couple of massive plants where they’re going to build the cars in Mexico and think, they think, that they’re going to sell those cars into the United States with no tax at the border,” Trump said. “We’re going to put a 100 percent tariff on every single car that comes across the line, and you’re not going to be able to sell those cars. If I get elected. Now, if I don’t get elected, it’s going to be a bloodbath, for the whole — that’s going to be the least of it. It’s going to be a bloodbath for the country. That’ll be the least of it. But they’re not going to sell those cars.”

The Trump campaign noted that one of the definitions of “bloodbath,” in the Merriam-Webster dictionary, is “a major economic disaster.” It also means “a notably fierce, violent, or destructive contest or struggle.”

Trump, of course, frequently quotes his opponents out of context and unfairly twists their words.

“And these people are trying to get them [undocumented immigrants] to vote. And that’s why they’re allowing them to come into our country.”
— Trump

This is false. There is no evidence Democrats want undocumented immigrants to vote — which would be against the law.

“No judge looked at it [lawsuits claiming fraud in the 2020 election] and said, they said we didn’t have standing. That’s the other thing, they said we didn’t have standing, a technicality.”
— Trump

This is false. Many 2020 election lawsuits filed by Trump and his allies were rejected on the merits, by judges who examined the evidence. The main case involving standing was at the Supreme Court, which tossed out the long-shot lawsuit filed by Texas and several other states, asking the court to bar four states from casting their electoral votes for Biden and to shift the selection of electors to the states’ legislatures. The court said Texas lacked standing to pursue the case, saying it “has not demonstrated a judicially cognizable interest in the manner in which another state conducts its elections.”

Justice Samuel A. Alito Jr., joined by Justice Clarence Thomas, said he would have allowed the case to be heard, for technical reasons, but he offered little hope he would have granted Trump the relief he sought. “I would therefore grant the motion to file the bill of complaint but would not grant other relief,” Alito wrote, “and I express no view on any other issue.”

“I ended the Nord Stream 2 pipeline, and Biden put it back on day one.”
— Trump

This is mostly false. Trump enabled the Nord Stream 2 pipeline — which would have doubled the export of Russian natural gas to Germany — over congressional opposition. “Successive U.S. Administrations and Congresses have opposed Nord Stream 2, reflecting concerns about European dependence on Russian energy and the threat Russia poses to Ukraine,” the Congressional Research Service said in a 2021 report.

Trump’s first secretary of state essentially allowed the pipeline to proceed, and only late in Trump’s administration could Congress pass a law that made the pipeline subject to sanctions that halted construction for one year. But by then it was largely complete. Biden waived those sanctions in an effort to mend fences with Germany — but the whole project was killed after Russia invaded Ukraine.

“It is well known that he said of Putin that he can do whatever the hell he wants and go into Ukraine.”
— Harris

This is partly false. Trump did not make this statement in the context of an invasion of Ukraine. In fact, Trump did not issue any invitation to Russia to invade U.S. allies but (in his telling) was informing the leader of a NATO member country that he would not defend that country from a Russian attack if Trump deemed the nation was delinquent on payments to the military alliance.

In a February rally, Trump said “one of the presidents of a big country” at one point asked him whether the United States would still defend the country if they were invaded by Russia even if they “don’t pay.”

“No, I would not protect you,” Trump claimed he told that leader. “In fact, I would encourage them to do whatever the hell they want. You got to pay. You got to pay your bills.”

“It is well known that he said when Russia went into Ukraine it was brilliant.”

— Harris

Trump did not use that exact word. Before Russia’s invasion of Ukraine in February 2022, Trump called Putin a “genius” and “very savvy.”

“You gotta say, that’s pretty savvy,” Trump said on a conservative talk radio show of Putin’s decision to declare certain breakaway regions in Ukraine as independent. “And you know what the response was from Biden? There was no response. They didn’t have one for that. No, it’s very sad. Very sad.”

“This is genius,” Trump said. “Putin declares a big portion of the Ukraine ... Putin declares it as independent. Oh, that’s wonderful.”

“It is well known he exchanged love letters with Kim Jong Un.”

— Harris

Trump called them “love letters.” In 2018, Trump said of North Korean dictator Kim Jong Un: “We fell in love, okay? No, really, he wrote me beautiful letters, and they’re great letters. We fell in love.”

Washington Post associate editor Bob Woodward, in his 2020 book “Rage,” revealed that Trump had permitted him to read and transcribe 27 letters and wrote that “Trump has personally said they are ‘love letters.’” Woodward quoted parts of the letters, and the full file of letters was made available to North Korea expert Robert Carlin, who analyzed them for Foreign Policy magazine.

In one letter, written in 2019, Trump “incredibly” closes with “your friend,” Carlin writes. But he said the letters are mostly an exchange of negotiating positions on North Korea’s nuclear arsenal.

“We’re in for 250 billion [dollars] or more [in aid to Ukraine] because they don’t ask Europe, which is a much bigger beneficiary to getting this thing

done than we are. ... We're in for 250 to 275 billion. They're into a 100 to 150."

— Trump

This is false. As of June 30, European aid to Ukraine exceeds U.S. aid, according to the Kiel Institute for the World Economy. European nations have allocated \$110 billion, compared with \$83 billion for the United States. Europe has also pledged an additional \$85 billion, which has not been allocated, compared with \$25 billion for the United States. As a percentage of the economy, the U.S. percentage ranks much lower than 21 other countries, Kiel estimates.

About \$36 billion in military assistance has been provided by European Union countries, compared with \$56 billion by the United States, according to the State Department.

"He [NATO Secretary General Jens Stoltenberg] got these countries, the 28 countries at the time, to pay up, he said. I've never seen — he's the head of NATO — he said 'I've never seen.' For years, we were paying almost all of NATO. We were being ripped off by European nations, both on trade and on NATO. I got them to pay up by saying one of the statements you made before, if you don't pay, we're not going to protect you, otherwise we would have never gotten it, he said. It was one of the most incredible jobs that he's ever seen done."

— Trump

When he was president, Trump often attributed quotes to Stoltenberg that could not be confirmed, such as: "Secretary Stoltenberg has been maybe Trump's biggest fan, to be honest with you. He goes around telling — he made a speech the other day. He said, 'Without Donald Trump, maybe there would be no NATO.'" Stoltenberg said no such thing.

Throughout the 2016 campaign, his presidency and now this election, Trump has demonstrated that he has little notion of how NATO is funded and operates. He repeatedly claimed that other members of the alliance "owed" money to the United States and that they were delinquent in their payments. Then he claimed credit for the money "pouring in" as a result of his jawboning, even though much of the increase in those countries' contributions was set under guidelines arranged during the Obama administration.

"And for 18 months, we had nobody killed [in Afghanistan]."

— Trump

This is misleading. In Trump's phrasing, it sounds as if no troops were killed in Afghanistan during the last 18 months of his presidency. A Defense Department database shows 12 deaths from hostile action in that period. There was an 18-month gap with no fatalities across Trump's and Biden's combined presidencies. We recently gave Trump Two Pinocchios for this claim.

“We wouldn’t have left \$85 billion worth of brand new, beautiful military equipment behind.”

— Trump

This is false, especially because Trump referred to “brand new” equipment.

Over two decades of war, the United States spent \$83 billion to train, equip and house the Afghan military and police — so weapons are just a part of that. Tanks, vehicles, helicopters and other gear did fall into the hands of the Taliban when the U.S.-trained force quickly collapsed. In 2022, CNN reported that a Defense Department report estimated that \$7 billion of military equipment had been left behind.

“This is the same individual who took out a full-page ad in the New York Times calling for the execution of five young Black and Latino boys who were innocent. The Central Park Five — took out a full-page ad calling for their execution.”

— Harris

The ad did not directly say this. In 1989, Trump placed a full-page newspaper ad calling for a return of the death penalty following a rape in New York’s Central Park, but his message was strongly implied. Five Black and Latino teenagers were convicted, spent years in prison and were later cleared in the case.

“I said, well, if they pled guilty, they badly hurt a person, kill the person ultimately. And if they pled guilty, then they pled we’re not guilty.”

— Trump

This is false. The Central Park Five confessions were coerced and then recanted. No one was killed.

“The former president has said that climate change is a hoax.”

— Harris

This is true. Trump has said this several times.

“We have created over 800,000 new manufacturing jobs. ... Donald Trump said he was going to create manufacturing jobs. He lost manufacturing jobs.”

— Harris

This is out of date. The number of manufacturing jobs rebounded since the pandemic, but growth in these jobs has essentially stalled. After a decline this year, the number of manufacturing jobs as of August is slightly lower than the number in October 2022, according to the Bureau of Labor Statistics. Dating from February 2021, the first month of employment data for Biden’s presidency, about 710,000 manufacturing jobs have been created.

“They lost 10,000 manufacturing jobs this last month.”

— Trump

Trump understates the loss. The number of manufacturing jobs fell by 24,000 from July to August, according to preliminary BLS estimates.

“Biden doesn’t go after people because supposedly China paid him millions of dollars. He’s afraid to do it between him and his son. They get all this money from Ukraine, they get all this money from all of these different countries. And then you wonder, why is he so loyal to this one? That one? Ukraine? China? Why did he get \$3.5 million from the mayor of Moscow’s wife?”

— Trump

This is false. There is no evidence Biden received millions of dollars from China. Republican congressional investigators claimed Biden’s son Hunter received a \$3.5 million wire transfer from Elena Baturina, a Russian billionaire and the widow of the former mayor of Moscow. In 2022, The Fact Checker investigated this transaction and learned that the investment vehicle that received the money was for a real estate deal involving Hunter’s partner, Devon Archer. In congressional testimony, Archer confirmed Baturina was his client and not connected to Hunter Biden.

“I rebuilt our entire military.”

— Trump

This is false. This is a golden-oldie claim that Trump frequently made as president. Trump has said his military budgets were the biggest in history, but adjusted for inflation, his administration’s budgets lag behind some years during the height of the wars in Iraq and Afghanistan. The biggest defense budget was in 2010, and in inflation-adjusted dollars, it was nearly 10 percent larger than Trump’s 2020 budget.



By Glenn Kessler

Glenn Kessler has reported on domestic and foreign policy for more than four decades. Send him statements to fact check by emailing him or sending a DM on Twitter follow on X @GlennKesslerWP

The Washington Post

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Defense witness for George Floyd murderer appears in pro-Trump ad

The retired police officer makes misleading statements about Kamala Harris's reaction to the violence after Floyd's death.



An image from video shows retired Minneapolis police officer Scott Creighton in an ad sponsored by the pro-Trump group Preserve America PAC. (Preserve America PAC)

Analysis by Glenn Kessler
September 16, 2024 at 6:00 a.m. EDT

"Four years ago, in this alley, rioters threw a brick at my face and knocked out my teeth. Why? Because I was a police officer. And what did Kamala Harris do? While

America's cities were burning, Kamala was defending peaceful protests. She raised millions to help bail rioters out of jail. And supported defunding our police, making us all less safe. Kamala Harris is dangerous."

— Scott Creighton, retired Minneapolis police officer, in an ad released by the pro-Trump group Preserve America PAC on Sept. 12

Preserve America PAC, a pro-Trump group, appears to specialize in first-person accounts by people allegedly wronged by Vice President Kamala Harris.

We previously looked at an ad featuring a woman whose son was killed by an undocumented immigrant in Texas — when Harris was district attorney for San Francisco. The new ad features a former police officer who says he was injured in the riots that erupted after Minneapolis police killed George Floyd. A similar ad, which features a police officer identified only as "Paul," attacks her running mate, Minnesota Gov. Tim Walz, for his handling of the situation.

These types of ads can be effective because personal testimony seems authentic. But, as the ad with the grieving mother does, Creighton makes misleading claims about Harris. The ad also does not mention that he was the first defense witness to testify for police officer Derek Chauvin, who was convicted of murdering Floyd and sentenced to 22½ years in prison.

The Facts

George Floyd was a Black man who was murdered on May 25, 2020, by Chauvin after he was arrested on suspicion of counterfeiting. Chauvin, in a scene recorded on video, knelt on Floyd's neck for more than nine minutes, asphyxiating him. Protests — and riots — erupted across the United States. In Minneapolis, a police station was burned to the ground, and Walz, the governor then as now, called in the National Guard on May 29 to restore order.

Vandals caused property damage to more than 1,500 locations, with fires set at nearly 150 buildings, according to the Minneapolis Star Tribune. Hundreds of officers left the force, and a number filed disability claims, including Creighton. He received \$190,000 in worker compensation, according to WCCO, the local CBS News station.

But police misconduct during the riots also was costly to the city. One man received a \$2.4 million settlement after being hit with a rubber bullet during a protest. Videos, captured by police body cameras, documented officers speaking derisively about the demonstrators, the news media and Mayor Jacob Frey.

Creighton was called by Chauvin's defense team because in 2019, not quite a year before Floyd's death, he had initiated a traffic stop and arrested Floyd, who had been in the passenger seat, for drug possession. "The passenger was unresponsive and uncompliant to my demands," Creighton testified. "I then had to physically reach in because I wanted to see his hands."

Creighton said he drew a gun on Floyd as he approached the vehicle and Floyd failed to place his hands on the dashboard. Another officer brandished a stun gun. But Creighton's testimony was undercut by his body-cam footage, which shows Creighton and another officer cursing and shouting at Floyd as they order him to show officers his hands. "Don't shoot me, man!" Floyd says to Creighton, who then pulls him from the car and handcuffs him.

Asked why Creighton was chosen for this message, a Preserve America representative pointed to his statement that he was hit by a brick during the 2020 melee. Preserve America did not respond to a request to make Creighton available for an interview, and he could not be reached.

Now let's look at his claims.

"What did Kamala Harris do? While America's cities were burning, Kamala was defending peaceful protests."

This tells half the story. Creighton ignores that Harris condemned the riots, even as she said people had a right to peacefully protest.

"It's no wonder people are taking to the streets, and I support them. We must always defend peaceful protest and peaceful protesters," Harris said after looting erupted in Kenosha, Wis., in August 2020. "We should not confuse them with those looting and committing acts of violence, including the shooter who was arrested for murder. And make no mistake, we will not let these vigilantes and extremists derail the path to justice." (She was referring to Kyle Rittenhouse, who fatally shot two people. He was acquitted of all charges after a trial in 2021.)

Similarly, when riots erupted in Portland, Ore., in late August that year, Harris tweeted to a post by Joe Biden condemning the violence: "I join @JoeBiden in condemning this violence. This cannot — and must not — be who we are. Americans deserve a president who will heal our country and bring people together — not fan the flames of hate and division."

Robert O'Brien, Donald Trump's national security adviser at the time, told CNN that Trump supported peaceful demonstrations, even as he pledged a crackdown on violence. We couldn't find a specific statement by Harris on the violence in Minneapolis, or even the protests, but she did have one tweet that is referenced in Creighton's next statement.

"She raised millions to help bail rioters out of jail."

This cannot be verified.

Creighton is referring to a tweet, from then-Sen. Harris, on June 2, 2020, just weeks before Biden selected her as his running mate: "If you're able to, chip in now to the @MNFreedomFund to help post bail for those protesting on the ground in Minnesota." As of this week, the post had been retweeted 23,000 times.

As we've reported before, until Floyd's murder, the Minnesota Freedom Fund (MFF) was a relatively small vehicle for assisting people who needed cash for bail. The MFF's 2018 tax filing shows it raised only about \$100,000 that year. Just weeks after Floyd's death, it raised \$35 million — in part because of tweets such as the one by Harris. The fund initially had only about \$10,000 set aside to help out protesters, MFF said in a tweet.

Harris herself never personally bailed out anyone or had any interaction with the fund, the fund's interim director told the Sacramento Bee in 2021. Internet personalities such as Nikita Dragun and James Charles tweeted images of donations of \$3,000 and \$1,000, respectively, around the same time. Justin Timberlake also tweeted his support. There's no way to know how much money was raised because of Harris's tweet. The Preserve America source noted that her ActBlue fundraising page for the MFF remains live.

In the end, few people involved in the protests needed the MFF's help to get out of jail. According to an accounting by the American Bail Coalition, verified by The Fact Checker with a review of Hennepin County jail records, all but three of the 170 people arrested during the protests between May 26 and June 2 were released from jail within a week. Of the 167 released, only 10 had to put up a monetary bond; in most cases, the amounts were nominal, such as \$78 or \$100. In fact, 92 percent of those arrested had to pay no bail — and 29 percent of those arrested did not face charges.

“And supported defunding our police, making us all less safe.”

This is mostly false. Harris, a former prosecutor, never supported the “defund the police” movement, though she called for “reimagining public safety” in the United States. The ad cites an article in the New York Post reporting that Harris told ABC's “Good Morning America” that the movement posed legitimate questions about police budgets, but the Post acknowledged Harris “stopped short” of backing defunding.

“Defund the police” was often misunderstood. It did not call for the outright elimination of police departments. Proponents by and large wanted to redirect some funds now spent on police forces to items such as education, public health, housing and youth services. The idea was that low-income communities would become stronger — and less in need of policing tactics — if root problems were addressed.

Under this concept, some police officers would be replaced with trained social workers or specialized response teams in an effort to let police focus on violent crime, not drug overdoses or homelessness. The theory is that police would be better positioned to deal with rapes and murders if they were not required to deal with other social ills that sometimes lead to community confrontations with police.

In several interviews in June 2020, Harris demurred when directly asked whether she supported “defund the police.” But she also straddled the issue with her rhetoric on taking a fresh look at public safety.

“We need to reimagine how we are achieving public safety in America,” she said when Meghan McCain of “The View” asked whether she supported the movement. “To have

cities where one-third of their entire budget is going to policing, but yet there is a dire need in those same cities for mental health resources, for resources going into public schools, for resources going into job training and job creation — come on. We have to be honest about this.”

Appearing on MSNBC on June 8, 2020, to discuss a bill she co-sponsored that aimed to improve police practices and hold police accountable for egregious conduct, Harris was also asked about “defund the police.” (The bill did not call for reducing police budgets.) Again, she offered similar rhetoric that fell short of supporting the movement.

“We don’t want police officers to be dealing with the homeless issue,” she said. “We don’t want police officers to be dealing with substance abuse and mental health. No — we should be putting those resources into our public health systems; we should be looking at our budgets and asking, ‘Are we getting the best return on our investment as taxpayers?’”

The Pinocchio Test

Creighton certainly is an interesting choice to be a spokesman about the violent aftermath that resulted from Floyd’s murder. His message is also flawed.

He says she defended peaceful protests — which are protected by law — but fails to mention she condemned the violence. He makes an unverified claim that she raised millions to bail rioters out of jail. It’s unclear how much of the money that was raised could be attributed to her — and in any case, few people arrested needed to put up money. Finally, he says she supported the “defund the police” movement. She never embraced it, instead saying the movement raised good questions about how public safety could be best achieved.

Overall, the ad earns Three Pinocchios



By Glenn Kessler

Glenn Kessler has reported on domestic and foreign policy for more than four decades. Send him statements to fact check by emailing him or sending a DM on Twitter follow on X @GlennKesslerWP

Daily **Montanan**

National bail association asks Senate to begin impeachment against two Bozeman judges

By: Darrell Ehrlick - October 4, 2024 1:55 pm



John Looney, Sr., owner of Bad Boy Bail Bonds

The executive director of the American Bail Coalition has submitted a request to Montana Senate President Jason Ellsworth, R-Hamilton, and other members of the Senate Select Committee on Judicial Oversight and Reform to begin an impeachment inquiry into two Bozeman Municipal Court judges who are accused of freezing out a bail bonding company until it withdraws a complaint before the state's Judicial Standards Committee.

The case has continued to work its way through city, state and now federal court, and has its genesis more than four years ago when Bad Boy Bail Bonds posted a \$1,585 bond in Bozeman Municipal Court that was forfeited. However, John Looney, Sr., the owner of Do Process Bail Bonding, later bought the Bad Boy name, but not the business. When he subsequently went to do business with the Bozeman Municipal Court, they rejected it, saying there was an outstanding bond.

According to court paperwork, Looney argued that it was not his business, his employee or his bond that was issued, but the Municipal Court still refused to take his bonds. In Montana, bail bonding companies are licensed through the state's Commissioner of Securities and Insurance. Looney's bail bonding license is current and active.

Looney eventually paid the bond in order to try clearing the administrative logjam, but he also filed a complaint with the Montana Judicial Standards Commission, which oversees judicial officers throughout the state.

After Looney paid, he went back to Gallatin County Detention Facility to bond, where he was again refused. Bozeman Municipal Judge Karolina Tierney and Chief Judge J. Colleen Herrington have said that they cannot resolve the matter until the complaint is either resolved or withdrawn.

Looney has said that his business may have to close, and he's losing as much as \$350,000 in business monthly.

Only two judges in Montana have been removed from office, the last nearly a century ago.

The executive director of the American Bail Coalition, Jeffrey Clayton, who served as an attorney for the Colorado Judicial Branch, told Ellsworth and the committee of lawmakers that he was, at first, reluctant to enter into the fight, but after reviewing the documents, the organization, which represents bail bonding companies nationally, he felt compelled to act in order to protect the practice from judicial abuse.

"This brazen demand (to withdraw the complaint) undermines the integrity of Montana's judiciary, demonstrates a grotesque abuse of judicial power, and casts doubt on the impartial administration of justice within the Bozeman municipal court," Clayton said. "Furthermore the Montana judiciary has refused to allow a pending lawsuit brought by Mr. Looney against municipal judges to proceed, further entrenching the perception of judicial protectionism."

Earlier this week, Looney's attorney, Matthew Monforton, filed a case in federal court, which has now been assigned to a second federal judge, after a lawsuit and request for an injunction appeared to languish without a response for more than a week in state district court.

The federal case was at first assigned to Magistrate Kathleen DeSoto, but Montana District Court chief judge Brian Morris reassigned the case to Judge Donald Molloy this week.

"I have never witnessed such widespread, unprofessional conduct in the judiciary in any other state than what I am watching unfold in Montana with Mr. Looney's case," Clayton writes.

He told the select committee that he practiced law in Colorado and in federal court for more than 20 years.

"I initially refused involvement because I simply refused to believe, as a former defender of the judicial branch, that such a complete miscarriage of justice could occur. Unfortunately, I was wrong in my judgment," he said.

Clayton said that the national organization is pushing to impeach both judges because their actions undermine the court system, while also endangering the legitimate bailing process, which is enshrined in Montana's state constitution.

"The American Bail Coalition believe that an impeachment inquiry is the appropriate and, perhaps, only mechanism to fully investigate these allegations, determine whether any judicial misconduct has occurred, and restore the public's trust in the court system," Clayton said. "We therefore strongly urge the Select Committee to exercise its oversight function and initiate this process without delay."

A spokesman for Ellsworth said that he is aware of the letter, but hasn't yet committed to any specific action regarding Looney's case.

"Senate President Ellsworth and the select committee appreciate those public comments and take them and the situation in Bozeman Municipal Court very seriously," said the Montana Senate Republican spokesman.

Bail bonds in Yellowstone County

In his latest court filing, Looney said that his bail bonds were being rejected not only in Gallatin County, but Yellowstone County as well.

A public documents request through Yellowstone County reveals some confusion about the bonding situation. Yellowstone County officials confirmed that they can take bail bonds for those being detained in Yellowstone County, but cannot take bonds for Bozeman at the Billings location.

One of the booking officers reported that the Yellowstone County facility cannot accept bonds for the Bozeman City Court.

As part of the public records request, Sen. Barry Usher, R-Billings, said that he had asked for a written copy of the order from the Bozeman Municipal Court, but was denied because it was not a written order.

The clerk told Usher, according to email records, that it was an "administrative order" and a "verbal order."

[Darrell Ehrlick](#)

Darrell Ehrlick is the editor-in-chief of the Daily Montanan, after leading his native state's largest paper, The Billings Gazette. He is an award-winning journalist, author, historian and teacher, whose career has taken him to North Dakota, Minnesota, Wisconsin, Utah, and Wyoming.

Daily Montanan is part of States Newsroom, the nation's largest state-focused nonprofit news organization.

Calexico Chronicle

In Opinion

GUEST COLUMN: Of Prop. 36, Of Bail Crowd-sourcing, Of Big Business, Of Profiteering

Carlos Acuña on October 22, 2024

Know what? I hope you'll pardon me for providing a sequel, but apparently recent events demand it. At the risk of sounding like a scold, let me add a paragraph or two, or several hundred more words, to last week's column.

As you may or may not recall, I posted a column to comment on yet another column two local gentlemen submitted and signed advocating for a proposed initiative on the ballot, Proposition 36. Due to what I perceived as misstatements of facts and political fluff, I opted to bring some facts and data to the discourse.

However, a day or two after I submitted my column I received more info from a newsletter I receive in my e-mailbox. Talk about adding some damaging facts that tend to diminish the role of "advancing the public interest" advocated by Prop. 36 and its evangelizers.

The newsletter from levernews.com arrived with, among other news items, the provocative title, "The Bail Bond Industry Fights to Keep You In Jail."

In essence, the Bail Bond industry and bounty hunters have strongly lobbied to outlaw crowd-sourcing to raise bail. If you're unable to raise bail due, in the main, to unemployment, underemployment or otherwise survive paycheck-to-paycheck, as 60 percent-plus of Americans do, then an arrest could not only seriously hamper your ability to work to meet survival needs, but the prolonged absence while awaiting trial could cost you your gig job, your minimum wage, assembly-line job with Corporation X. Not to mention eviction should you fail to pay rent or should your landlord (-lady, -person?) find out you're in the clink.

I hope these words do not offend too deeply America's true globalist masters (mistresses?) in the process of venting on this latest outrage visited against working class individuals, the true wealth creators of the world.

Why does this industry, that exists "to release arrestees," wish to change this law, to *outlaw* public, crowd-sourcing generosity and authentic acts of altruism? Why? For. Profit.

Send money to bail out someone you feel was unjustly arrested and charged? Why you and the crowd-source organizers could be facing federal insurance fraud charges! Courtesy of the Bail Industry and its Big Insurance underwriters.

The latter never misses a chance to make money out of people's misfortunes, or fear of the same.

I won't get into the topic of ethno-classist inequities involved in imposing bail amounts or determining who should get OR's (release on one's "own recognizance" — one's *promise* to appear on one's sacred word and honor). The folks in black robes straddling the bench, appointed or elected, already have enough on their plate without having to examine their consciences. The "Lever" piece says it all. So, I'll move on.

The most noteworthy and disgusting detail strikes one right between the eyes, as they say.

A group called The American Bail Coalition came into existence to "defend the use of bail bonds," to fight against enlightened policies such as pretrial service programs that included community supervision designed to *assure judges* that the accused would appear in court for their hearings.

With rare exceptions (and isn't existence just *packed with them* in any observable area? Example: stars don't usually fall from the sky, unless it's the Chicxulub and you're a laid back Tyrannosaurus Rex sleepily lounging off the warm waters on the Gulf of Mexico by a nearby beach eventually to become Cancun) these enlightened, pro-citizen policies worked. Much to the chagrin of the palm-rubbing, lip-smacking money-lenders ...

According to The Lever, some of these laws appear ghostwritten by corporations. And another dreary fact, according to an ACLU 2017 study, at least one big multinational insurance company with ownership in the bail industry, a Japanese concern, manages more than \$40 billion in investments. Bingo, the bail bond "industry's" true interests.

By the way, these bail bonds are actually *loans*. They rise to the billions of dollars, not exactly chump change. "Hey, judge, impose bail on this person, too. Big Insurance (BI) *needs* the money!"

And, so, now we finally reach the climax of this sad commentary. If and when Prop. 36 passes, offenses once classified as misdemeanors "will rise" to the status of ... *felonies*. And, man oh, man, will persons accused of the "new and improved" felonies *need* bail.

BTW a schedule exists that "suggests" bails to judges based on the felony charged. And BI and its suspected brain-child, Prop. 36, will only be too glad to help — *expand* the bail-feeding list of felonies. As Rick Blaine in the film "Casablanca" told the corrupt Inspector Renault who self-assigned virtue because he provided escape visas to desperate refugees fleeing the Nazis, "For a price, Louis, for a *price* ..."

I wonder if our locally elected inspectors, prosecutors and judges know who they're *really* working for?

Be well.

Carlos Acuña of El Centro is an attorney.



Politics & Government

Bail reform legislation set for committee hearing

Michigan Public | By Colin Jackson | MPRN
Published November 11, 2024 at 7:43 PM EST



Lester Graham/Michigan Radio

Bills to give Michigan judges the option of imposing cashless bail in some cases are scheduled to receive a committee hearing Tuesday morning

The [legislation](#) would require courts to look at factors like a defendant's risk for running away, causing harm, or not showing up to court when deciding whether to require cash bail.

It would not apply to individuals [ineligible for bail](#) under the state constitution.

Representative Stephanie Young (D-Detroit) sponsors the package. She said the current system of monetary bail creates inequality.

“You show up and you have \$250 to post bail, and I show up and I don’t. I get locked up. And you go home. That makes no sense,” Young said.

It’s an argument advocates around the country have long made for getting rid of cash bail, which [they say disproportionately impacts communities of color](#).

Last year, the City of Detroit began implementing [its own pre-trial bail reforms](#) as part of a lawsuit settlement with the ACLU. That lawsuit claimed the Detroit 36th District Court’s cash bail system was a violation of people’s constitutional right to equal protection under the law.

The bills are set to receive a hearing before the House Criminal Justice committee at 9 a.m. Tuesday.

Committee Minority Vice Chair Graham Filler (R-Duplain Twp) opposes the legislation and said he plans to organize other Republicans against it as well.

That’s because Filler said the current bail system protects the public.

“When you tell criminals that there will not be consequences, fascinatingly enough, these people who do commit crimes, low level, or high level, tend to take advantage of that system,” Filler said.

He argued the bills would tie judges’ hands when defendants appear before them.

“They’re skewing it in favor of the individual who has committed and then being charged with a crime. Why are we doing that?” Filler said, blaming out-of-state interest groups for bringing up this issue in Michigan.

But Young said judges would still have discretion in cases.

“Everybody’s not being considered for this. I believe that the judges have the common sense that we voted them to have when people come before them,” Young said. “If a violent criminal is coming before them asking to be released, I hope that the judges have better sense than that.”

Still, Young and her package co-sponsors could face an uphill battle in trying to get the legislation through as the narrative around cashless bail remains in the air.

New York, which had previously approved a bail reform, [rolled it back](#) last year.

The Michigan bills could face both slim Democratic majorities in the state House and Senate, as well as likely Republican opposition.

Plus, time is running out in this year's legislative session to push bills through. The bail reform bills had been waiting in committee without a hearing since May 2023.

Tuesday, November 12, 2024

Michigan/Crime/News

Bipartisan bills aim to end Michigan's wealth-based bail

The state's reliance on cash bail has led to thousands of low-level, nonviolent defendants languishing in jail simply because they cannot afford bail

By Steve Neavling



Steve Neavling

The Wayne County Prosecutor's Office is now located at the new Wayne County Criminal Justice Center in Detroit.

Michigan lawmakers are considering a historic bipartisan package of pretrial reforms aimed at transforming the state's criminal justice system by reducing wealth-based detention, strengthening due process, and ensuring fairer pretrial decision-making.

On Tuesday, the House Criminal Justice Committee heard testimony on the bills — 4655-4656 and 4658-4661 — which, if passed, would bring sweeping changes to pretrial practices across Michigan.

Advocates and officials — including [The Bail Project](#), community activists, state representatives, 36th District Chief Judge William McConico, and Ottawa County public defenders —

emphasized the need for the reforms to ensure equal justice and prevent unnecessary detention of those who pose no risk to public safety but lack the funds to secure release.

The proposed bills tackle Michigan's long-standing reliance on cash bail, which has led to thousands of low-level, nonviolent defendants languishing in jail simply because they cannot afford bail.

In an average day, Michigan jails hold more than 16,000 people who have not yet been convicted of a crime, according to The Bail Project, a national nonprofit that provides free bail assistance and pretrial support to thousands of low-income people every year, while advancing policy change at the local, state, and national level.

"The full passage of these bills is an opportunity for Michigan to lead the Midwest and the nation towards a more perfect criminal justice system," The Bill Project said in a statement Tuesday. "These bipartisan bills offer an opportunity to move Michigan's justice system forward, shifting away from a model where wealth acts as a proxy for safety, creating a two-tiered system — one for those with money, and another for everyone else."

It continued, "Michiganders deserve a more fair and effective pretrial system, and thankfully, the legislature now has the solution."

The bills, if passed, would reshape how Michigan courts handle pretrial release.

HB 4655 would establish a uniform framework for pretrial decision-making. Judges would be required to release individuals charged with non-assaultive, non-violent offenses without imposing bail unless there is clear evidence of a risk to the community. The bill mandates that judges conduct assessments to determine a person's ability to pay before setting bail and requires court reminders for defendants, reducing the chance of missed court appearances.

Under HB 4656, due process would be strengthened by mandating that judges impose only the least restrictive conditions necessary to ensure public safety. Global Positioning System (GPS) monitoring and drug testing would be limited to cases involving domestic violence or serious assault. Defendants held for more than 48 hours without release would be entitled to a hearing to reassess their bail conditions.

HB 4658 would introduce consistent standards for interim bond practices, requiring people accused of minor, non-threatening offenses to be released without money bail. For serious misdemeanors, interim bond amounts would be capped at 50% of the maximum fine.

HB 4659-4661 would update current Michigan laws to align with the proposed pretrial decision-making reforms.

The legislation has gained traction among community leaders and advocates who argue that wealth should not be a factor in determining whether someone remains in jail before trial. The proposed reforms also address concerns about due process, creating a more balanced system that would protect public safety while safeguarding the rights of the accused.

The House Criminal Justice Committee is expected to vote on the bills in the coming weeks. While the bills have some bipartisan support, Republicans have expressed concerns with the bills.

State Rep. Graham Filler, a Republican vice chair of the House Criminal Justice Committee, said he's worried about the bills' impact on public safety.

"This represents a dangerous shift in how we handle public safety," Filler said. "The people of Michigan deserve a criminal justice system that prioritizes their safety. These bills would force judges to let certain offenders walk free without bail, even if they pose a clear threat to public safety."

Filler also took issue with limiting judicial discretion.

"We trust our judges to make decisions that keep our communities safe," Filler said.

"Handcuffing their ability to do so is not just short-sighted — it's reckless. Michigan should learn from the mistakes of other states, not repeat them."

THE MIDWESTERNER

Tuesday, November 12, 2024

Originals

Michigan House Republicans slam Dems' move to eliminate cash bail 'Radical experiment will turn Michigan into a hotbed of crime sprees'

By Bruce Edward Walker



Michigan House Republicans on Tuesday expressed their staunch opposition to a slate of Democrat-sponsored bills that will effectively eliminate cash bail requirements for certain offenders.

In its meeting on Tuesday, the [House Criminal Justice Committee](#) discussed House Bills 4655-4656 and 4658-4661. The bills aim to revise the state's bail laws and legally restrict judges from requiring criminal defendants to post cash bail as a prerequisite to obtain release while awaiting trial.

The proposed reforms would not only render judges' current ability to set bail for "low-level crimes," but as well prohibit them from weighing a defendant's criminal record, failure to appear in court, or whether the judge and prosecutors deem them potentially dangerous to the community.

Critics such as Committee member Rep. Mike Harris, R-Waterford, assert that the phrase “low-level crimes” can be arbitrarily applied.

“Letting more accused criminals out of jail without bail is a dangerous move that threatens public safety and undermines criminal justice,” Harris said in a statement. “Bail is a powerful financial incentive for good behavior. It encourages defendants to follow the law in our communities and then show up in court. This legislation would tie the hands of judges and release more criminals into our communities without the necessary guardrails to keep our communities safe.”

Harris served in law enforcement for 26 years, retiring as a Waterford Police sergeant. He noted that New York and California adopted similar bail reforms, which he said has led to increased rates of recidivism. In New York City, for example, [“nearly 50% of felony offenders released without bail were rearrested while awaiting trial.”](#)

“Without strong bail requirements, repeat offenders have caused a crime surge in other states,” Harris continued. “Michigan shouldn’t repeat the mistakes of California and New York. We should keep bail options available to protect our communities while ensuring defendants and victims receive their day in court.”

Criminal justice reform has been on the Democrats’ agenda for the past six years, and picked up a head of steam after the party won the Michigan House, Senate, and governorship in 2022. With the recently elected House Republican majority readying to take office in January 2025, the lame-duck Democratic majority has supercharged its efforts to pass lingering legislation. The Bail Project, a left of center organization, unsurprisingly heralded the legislation and called on lawmakers to pass the bills.

“The legislation heard today in Michigan’s House Committee on Criminal Justice advances common sense pretrial reforms that center fairness and equal justice in the state’s pretrial system,” TBP’s news release states. “To the benefit of all Michiganders, the Committee should vote ‘yes’ on this package and advance meaningful criminal justice reforms that balance protecting public safety and mitigate the harms of unnecessary incarceration. The full passage of these bills is an opportunity for Michigan to lead the Midwest and the nation towards a more perfect criminal justice system.”

Rep. Graham Filler, R-Duplain Township, said the passage of the bills would limit the authority and discretion currently exercised by sitting judges.

“This represents a dangerous shift in how we handle public safety,” Filler said in a news release. “The people of Michigan deserve a criminal justice system that prioritizes their safety. These bills would force judges to let certain offenders walk free without bail, even if they pose a clear threat to public safety.”

Filler continued: “We trust our judges to make decisions that keep our communities safe. Handcuffing their ability to do so is not just short-sighted — it’s reckless. Michigan should learn from the mistakes of other states, not repeat them,” and added: “If we move forward with this radical experiment, we risk turning our neighborhoods into the next hotbeds for crime sprees,” Filler said. “Releasing dangerous people without any oversight has very real consequences, and we can’t ignore that.”



Tuesday, November 12, 2024



There is a bill in the House to restructure the cash bail system in Michigan. Some say it will be easier for people to afford their bail while others think it will lead to more criminals on the streets. What do you think? [Zachariah Wheaton](#) will share more from lawmakers and opponents on News 10 at 6 p.m.



Tuesday, November 12, 2024

More affordable bail for people waiting to go on trial being considered by lawmakers



A new plan at the State Capitol would make bail more affordable for people who are waiting to go on trial.

By Zachariah Wheaton

LANSING, Mich. (WILX) - A new plan at the State Capitol would make bail more affordable for people who are waiting to go on trial.

Statewide research shows approximately 60 percent of Michigan's jail population is made up of pre-trial detainees -- people who are sitting in jail because they can't afford bail.

"If you can't afford it, there's a ripple effect. I've watched people lose their jobs, their families, their homes, because they couldn't afford that bail," bill sponsor, Rep. Tyrone Carter (D- Detroit) explained.

Lawmakers who introduced the [bill package](#) testified during the House Committee on Criminal Justice. They say it promotes racial and economic equity by limiting cash bail and expanding pretrial services to help people comply and keep people out of jail for solely not being able to make bail.

One of the bill sponsors, Rep. Kristian Grant (D- Grand Rapids) said Michigan's current pretrial system overcrowds state facilities and creates a hefty tax burden for residents.

"With fewer people in jail for minor offenses authorities can focus on detaining individuals who pose a genuine public safety threat and proving the overall effectiveness of the criminal justice system," Rep. Grant explained.

People who have committed violent crimes would not be eligible for the cheaper bail, but despite that, there are still concerns. The Executive Director of the American Bail Coalition, Jeff Clayton said he's afraid this kind of a change could lead to more criminals on the street.

"I think it's absolutely going to create pretrial crime, which means crime while people are out on bail. And I think people aren't going to show up for trial which means victims aren't going to get justice. So, it's really going to grind the system to a halt," Clayton stated.

The Chief Judge of Michigan's 36th District in Detroit, William McConico pointed out that the city has already enacted sweeping bail reform. He said the changes have led to less crime and freed up resources.

"We have the lowest homicide rate in the city of Detroit that we've had in 50 years. All violent offenses are down. The reason I bring this up is that we have reduced crime in the city of Detroit during a time of bail reform," McConico explained.

There was no movement on the bill package today, but that could change soon. Democrats are working to push their bills across the finish line before the legislative session ends in December, and Republicans take control of the House in January.



Tuesday, November 12, 2024

WWJ Newsradio 950
News Local

Michigan lawmakers debating cash bail reform legislation that would let some offenders walk without paying bond



Photo credit Getty Images



By WWJ Newsroom, WWJ Newsradio 950

LANSING (WWJ) — Michigan lawmakers are weighing in on a package of bills that would restructure Michigan's cash bail system.

The Michigan House Criminal Justice Committee on Tuesday held a hearing regarding the bail reform legislation, with Republicans and Democrats split on their views of what the reform would mean for the state.



[House Bill 4655](#) would give Michigan judges the option of imposing cashless bail in some cases. It states unless double jeopardy applies under the state constitution, "a person accused of a criminal offense is entitled to release on personal recognizance or bail that is not excessive."

When making a pretrial release decision, in part, the court "shall make a determination on the record as to whether a defendant poses a clear and convincing risk of any of the following" — nonappearance, absconding or personal harm to another reasonably identifiable person or harm to the community at large.

Opponents of the bill say there could be a potential threat to public safety, as those detained for some crimes could be released back into the community. Supporters argue all defendants deserve "affordable bail," saying "rich criminals" shouldn't be the only defendants able to be released.

Michigan Sheriffs' Association Deputy Director Daniel Pfannes spoke against the bills during Tuesday's hearing, warning that the bills could lead to a rise in crime by releasing high-risk defendants and weakening incentives to appear in court.

"The bond is likely to have been the one reason the individual appeared or complied with the conditions of their release. To eliminate the bond seems counterproductive," Pfannes said. Pfannes noted in cases when an offender is required to pay a bond, it is "predicated on their ability to pay and the amount of money they can come up with in 24 hours."

"Most offenders do not have ready access to cash. This may be a contributing factor as to why they are an offender. By not coming up with any funds, the court is required to release them on personal recognizance," he said.

Saying the Michigan Sheriffs' Association opposes the reform, Pfannes pointed in part to other parts of the country that have implemented similar measures that are "now being rejected due to adverse outcomes."

"There are stories out of New York where the system of no cash bond has resulted in [three people alone being arrested 300 times](#) for the crime of shoplifting. These same type of laws [have just been overturned in California](#) because retail theft had become so rampant," he said.

Meanwhile, 36th District Court Chief Judge William McConico spoke in support of the legislation. He cited a drop in crime across the city of Detroit that has been seen after the city implemented a version of cashless bonds last year as part of a settlement with the ACLU. McConico says Detroit has tougher reform than what's outlined in the legislation, but they're seeing lower crime.

"What we have done is, we have altered how we are doing pretrial monitoring. Before, people just had GPS; you can just be out and do whatever you want to do. No, we have restrictions. The use of house arrest has been used a lot more, curfews have been used a lot more. And if you violate your tether restriction, your bond is revoked," McConico said Tuesday.

"Some will say if you have more people out on tethers or more people out on personal bonds, that crime will go up. That's just not the facts. That's not what we're seeing," he said.

The bills were not taken up by the committee on Tuesday, but will be at a later date. The teens [accused in the murder of Oakland County Sheriff's deputy Bradley Reckling](#) were out on bail at the time of the shooting.



Wednesday, November 13, 2024



Jobs For Felons Hub / CC

Michigan Lawmakers Considering Bail Reform

By Mary Ellen Murphy

(Lansing, MI) – Michigan lawmakers are considering bail reform. A proposed bill package that would make bail more affordable for people awaiting trial was discussed yesterday during the House Committee on Criminal Justice. Proponents believe the proposal promotes racial and economic equity by limiting cash bail.

Some believe Michigan's current pretrial system overcrowds state facilities and creates a tax burden for residents.

Wednesday, November 13, 2024

Michigan lawmakers debate over proposed bail reform bill package

by Courtney Bennett



Michigan lawmakers debate over proposed bail reform bill package (FILE)

LANSING, Mich. - A series of bills were sent to the Michigan House to the Criminal Justice committee on Tuesday.

The bill sponsors are advocating for a change in bail.

The bail reform would restructure the system here in Michigan.

While it has some support it's also faced criticism.

This legislation if approved would allow some people to be released without having to pay a bond.

It would restructure the current cash bail system.

"We do believe it is radical," says Jeffrey Clayton, the American Bail Coalition Executive Director.

Clayton testified in Lansing on Tuesday on why he believes it isn't a good idea to restructure the system.

"The use of bail is what makes criminals accountable to come back to court," says Clayton.

The series of bills was heard by the Michigan House Criminal Justice Committee.

Democrat State Representative Stephanie Young is a co-sponsor of the bill and says this reform doesn't apply to certain crimes.

"Assaultive crimes are not eligible and the judges know it and the packages focus on the sort of charges that don't pose a danger to society," says Young.

But not all lawmakers see it that way.

Republican Representative Graham Filler says he's concerned about how this would impact overall crime in cities across Michigan.

"I want judicial discretion when they see individuals who have been arrested and are going to be arraigned. I want a judge to be able to look at that file and make a decision whether that individual should get a bail or not. And this bill package is skewed so entirely in favor of individuals who commit crimes that I can't support that in good conscience," says Filler.

Lawmakers have criticized the way Michigan has its bail system set up right now, saying it disenfranchises people who can't afford to post a bond, Filler telling me that he doesn't see it that way.

"Every judge I've talked to says an individual commits shoplifting and they're not getting a \$10,000 bond, they're not getting a million dollar bond, they're getting a PR bond, and they're told, we'll see in two weeks," says Filler.

Under Michigan law, judges are required to consider the seriousness of the crime, but bail is not supposed to be excessive.

Judges have the discretion to set an appropriate amount.

Third Circuit Court Judge Cylenthia LaToye Miller says she supports the change.

"I stand behind this bail reform bill package because I believe responsibly reforming the bail system would decrease recidivism and allow the public safety system to focus on the most serious safety threats," says Miller.

The series of bills weren't voted on in the committee on Tuesday.



Wednesday, November 13, 2024

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by Courtney Bennett



Michigan lawmakers debate over proposed bail reform bill package (FILE)

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Thursday, November 14, 2024



Critics blast Michigan bail reform bills as 'clear threat to public safety'

By Thérèse Boudreaux | The Center Square

(The Center Square) – Six bills under consideration in the Michigan’s House Criminal Justice Committee would reform state law to limit judges from requiring bail as a condition of release for some accused criminals awaiting trial.

Among other changes, House Bills 4655-4656 and 4658-4661 would stiffen the criteria for imposing detention conditions on a person accused of a low-level crime awaiting trial, denying judges the ability to factor in a defendant's criminal history, prior failures to appear in court, or potential danger to the community.

State Rep. Graham Filler, R-Duplain Township, called the bills a “dangerous shift” in how Michigan handles public safety.

“These bills would force judges to let certain offenders walk free without bail, even if they pose a clear threat to public safety,” Filler said. “When repeat offenders are given a free pass, it’s no surprise that crime rates go up...These policies are tied to a surge in violent crime in states where they’ve been adopted.”

Filler referenced similar bail reforms in other states, such as New York and California, that saw sharp increases in repeat offenses after the legislation passed. In New York City, nearly 50% of felony offenders released without bail were rearrested while awaiting trial, according to a [report](#) by the Manhattan Institute.

HB 4655 in particular would change the language of the law from “a person accused of a criminal offense is entitled to bail,” to “a person accused of a criminal offense is entitled to release on personal recognizance or bail that is not excessive.”

The new language [would not apply](#) if the criminal allegation [consisted of](#) murder, treason, criminal sexual conduct in the first degree, armed robbery, kidnapping with the intent to extort money, or a violent felony committed while the person was on bail.

“Letting more accused criminals out of jail without bail is a dangerous move that threatens public safety and undermines criminal justice,” said state Rep. Mike Harris, R-Waterford, who served

in law enforcement for 26 years. "Bail is a powerful financial incentive for good behavior. It encourages defendants to follow the law in our communities and then show up in court...Michigan shouldn't repeat the mistakes of California and New York."

Friday, November 15, 2024

Dems eye cash bail, 'second look' criminal justice reforms in Michigan lame-duck



Proponents of "second look" legislation allowing prisoners with lengthy sentences the option to petition for a reduction in their sentence rallied at the Michigan Capitol Tuesday. (Courtesy)

- Bail and pretrial reform, "second look" at sentencing and productivity credits among criminal justice reforms percolating in state legislature
- Democrats hopeful, Republicans skeptical that the changes would improve the state's criminal justice system
- Any proposal would need to pass before the end of the year, when a new session begins and Republicans take control of the House

LANSING — Michigan lawmakers are contemplating big changes to how courts handle bail during pretrial proceedings and a possible "second look" at prisoners' existing sentences.

The Democratic proposals are among several major criminal justice reforms pending in the Michigan Legislature — but with just weeks left in the session, it's unclear whether they'll reach Gov. Gretchen Whitmer's desk.

Lawmakers this week heard testimony on bills aimed at reducing local courts' reliance on cash bail for low-level, nonviolent crimes and setting statewide standards for the process, a change long sought by reform advocates.

Officials also heard from proponents of "Second Look" legislation, who rallied at the Capitol Tuesday in support of plans that would give prisoners with lengthy sentences the option to petition for a reduction in their sentence after a certain period of time.

The bills have largely languished so far in Lansing, though Democrats backing these and other criminal justice initiatives see a possible path to get them to Whitmer during the "lame-duck" session, after which point Republicans will retake majority control of the state House.

Rep. Kara Hope, a Holt Democrat and chair of the House Criminal Justice Committee, told Bridge Michigan that she's hoping to see at least one major criminal justice reform get signed into law before the end of the year.

"Any one of them would be humongous" to moving the state's criminal justice system forward, Hope said. But she acknowledged time is running short.

"I'm optimistic, but I'm not delusional," she said.

Critics of the latest efforts to change Michigan's criminal justice system are concerned the proposals aren't tailored to local community needs and could instead hamper local law enforcement and judicial efforts to keep residents safe.

Rep. Graham Filler, R-St. Johns, told Bridge that past bipartisan criminal justice efforts he's worked on, like making the expungement process easier or raising the age of who is considered an adult by the criminal justice system, were borne of state-specific problems that needed solving.

He's not convinced the latest crop of legislation would achieve similar results.

"They've not come from the ground floor of, 'We have a public safety fairness issue in the state of Michigan,'" Filler said. "It's going to be really hard...to get Republican support, and I think hard for Dems to get support, because I don't think people see that there's a huge issue."

Here's a closer look at what criminal justice issues lawmakers have considered this session, and where they stand as the year winds down.

Bail reform

The state House Criminal Justice Committee is considering a package that if enacted would require judges to take a defendant's ability to pay into account when setting cash bail requirements and only doing so in cases where a person is charged with a serious crime and poses significant risk.

Supporters of the effort argue the changes would result in a fairer criminal justice system that doesn't punish people for being poor, pointing to successes with the city of Detroit's recent pretrial bail reforms required under a lawsuit settlement with the ACLU of Michigan.

“We no longer have people not knowing who's going to care for their children, who's going to make sure that their elderly parents are taken care of, because they're sitting and sitting in the Wayne County Jail,” said William McConico, chief judge of the 36th District Court and a former state lawmaker.



William McConico, chief judge of the 36th District Court and a former state lawmaker, spoke during a hearing on bail reforms about how pretrial changes have gone in Detroit. (Screenshot)

Critics remain wary of implementing statewide bail reforms in Michigan, particularly as other states like New York [roll back similar efforts](#).

Jeff Clayton, executive director of the American Bail Coalition, argued that Michigan’s existing bail rules are “the gold standard” and already offer a level playing field for when and how judges should impose bail.

And Rep. Mike Harris, a Waterford Republican and former police officer, called bail a “powerful financial incentive for good behavior,” arguing any attempt to release more people accused of crimes out of jail without bail would be “a dangerous move that threatens public safety.”

‘Second Look’ at prison sentences

Other legislation pending in the state House and Senate would allow most prisoners to petition for a reduction in their overall sentence after serving part of their sentence if they are no longer deemed a risk to society.

Chuck Warpehoski, program director of the Michigan Collaborative to End Mass Incarceration, said allowing a “second look” for low-risk prisoners with lengthy sentences could help ease the pressure on the state’s overburdened corrections system while rewarding prisoners who have proven rehabilitation.

Warpehoski said he believes there’s a path to reform in lame-duck, noting that advocates are open to changes — after negotiations with lawmakers concerned that the initial proposal of 10 years before prisoners could begin petitioning was too short a time, proponents of the bills agreed to a 20-year waiting period.

GOP lawmakers, prosecutors and others have slammed the legislation as extreme, arguing it would lead to the release of dangerous criminals, re-traumatize victims and burden courts with a surge in resentencing requests.

Wrongful imprisonment

Lawmakers are also considering changing eligibility requirements for wrongfully convicted people seeking funds under the state's Wrongful Imprisonment Compensation Act, a move that would likely allow many people currently ineligible for relief to apply.

The legislation would adjust the state's 2016 law allowing wrongfully convicted people to collect \$50,000 for each year of wrongful imprisonment. ProPublica previously reported that the law's requirements have [resulted in compensation delays or denials](#) for people who were convicted and later found innocent.

Legislation reforming the system is pending in both the House and Senate. A House panel moved the bill to the floor in March, and the Senate Civil Rights, Judiciary and Public Safety Committee reported its version of the bill to the Senate floor Thursday.

End juvenile life without parole

House and Senate legislation introduced last year would eliminate juvenile life without parole sentences in Michigan, a concept spurred by [state](#) and [federal court decisions](#) that determined automatically sentencing minors to life in prison without parole was unconstitutional.

[The bills](#) remain pending in committee in both the House and Senate and would eliminate life without parole sentences for youth under 19, capping the maximum sentence at 60 years for serious offenses. Some bills in the package include Republican co-sponsors.

As proposed, the legislation would also allow for parole review after 10 years in cases where the youth's age and maturity level, family home environment, circumstances of the offense and possible peer pressure factor into the crime.

"Michigan law needs to recognize that juvenile offenders deserve a chance at rehabilitation," Sen. Jeff Irwin, D-Ann Arbor, said in a statement when introducing the legislation last year. "We shouldn't turn our backs on juvenile offenders and throw away the key."

Productivity credits

Several Democratic lawmakers have also backed [legislation](#) allowing eligible inmates to knock off up to 20 percent of their minimum prison sentences by completing educational or vocational programs, though previous efforts to move the bill forward stalled amid legal questions.

The plan would effectively reverse a [1978 ballot initiative](#) that ended Michigan's previous credit system for good behavior for most inmates and require inmates to complete their minimum sentence before being eligible for parole consideration.

Because it would change a voter-approved law, the plan would require approval from three-quarters of the state legislature and likely be a hard sell in the closely divided House and Senate.

Hawai`i Free Press

Monday, December 16, 2024

Reply to ACLU: Fixing Hawaii Bail Problem Requires Return to Core Constitutional Principles

By Selected News Articles

FIXING HAWAII'S BAIL PROBLEM REQUIRES RETURN TO CORE CONSTITUTIONAL PRINCIPLES

by James Waldron Lindblad, Bondsman, A-1 Bonding Hawaii

Hawaii's bail system is in need of reform -- most people involved in the process agree on that. Of course, the real challenge lies in determining what reforms are necessary and how to fund them. Having served as a compensated surety for criminal defendants in Hawaii for nearly 50 years, I am certain that the solution requires a return to the core constitutional principles from which we have strayed. The ACLU of Hawaii, in the Hawaii Bar Association Journal, October, 2024, makes a compelling -- and likely irrefutable -- case that reforms implemented in 2019 have not reduced pretrial incarceration, which was actually its key goal. I agree that things need to change. The challenge we face is how to achieve this while protecting public safety and ensuring that the court process remains efficient.

Hawaii does not have a "money bail" system, and if it did, it would be illegal. There is no such thing as "buying" your way out of jail here. Instead, Hawaii's statutes make it clear that bail is "signing of the recognizance by the defendant and the defendant's surety or sureties, conditioned for the appearance of the defendant at the session of a court of competent jurisdiction." [1] This aligns with the laws of other states, which essentially treat bail as a tri-partite contract between the court, the surety (whether compensated or not) and the accused. The surety provides an enforceable guarantee that the defendant will appear, with the penalty being the amount set by the court. Courts are responsible for setting a bail amount that is "reasonably calculated" to serve the purposes for which bail is offered. [2]

The U.S. Supreme Court has emphasized that bail is not about "purchasing" freedom but rather providing the option of selecting the "jailers of his own choosing." [3] As William Blackstone famously wrote in his Commentaries, the accused are released into the "friendly custody" of a surety, rather than being sent to jail. [4] It is also important to note that the framers of both the Hawaii and U.S. Constitutions anticipated that private third parties would have the authority to arrest and return the accused to state custody in order to avoid paying a forfeiture. [5]

The notion that someone can simply "purchase" their freedom is contrary to law. Like most states, Hawaii operates under a system of personal sureties, where a third party takes custody of the defendant under a contract. This contract requires forfeiture of the sum set by the court if the defendant fails to appear. To emphasize this point, I often tell people: cash is not a surety. Unlike me, cash cannot arrest someone and return them to jail if they fail to appear in court as required.

Hawaii is not immune to the problems seen in other states. When it comes to progress, it's tempting to create a "money bail system" straw man, dismantle it, then advocate for release without bail, rather than seek real solutions. As the ACLU pointed out, Honolulu has the longest case disposition times in the United States, [6] an issue that undoubtedly needs to be addressed.

Now, let's address the real issue contributing to the harm, which has nothing to do with bail. As Hawaii Supreme Court Chief Mark Recktenwald noted in 2011, Hawaii has experienced "extensive and increasing delays" in the pretrial process. [7] In fact, as of 2024, there is no evidence to suggest these delays have done anything but get worse. While that may sound like a simple observation, the reality is that prolonged pretrial delays are the primary cause of growing pretrial jail populations. This, in turn, leads to all the negative consequences of over-incarcerating individuals awaiting trial.

To illustrate this further, I call your attention to a statewide study by the PEW Charitable Trusts of Michigan's system, which found that 82% of pretrial jail costs were driven by just 17% of defendants. [8] Who were they? These were defendants held for 30 days or more, usually on serious charges or non-bailable holds. The remaining 83% of defendants, who stayed less than 30 days, accounted for only 18% of total pretrial jail costs. This is similar to national data from PEW Charitable trusts that found that 85% of jail costs are caused by a mere 21% of defendants.[9] Therefore, even if Hawaii were to release half of its pretrial population -- those considered low-risk, who typically stay under 30 days -- it would only reduce overall jail costs by 8.5% over the course of a year.

The increase in time to a speedy trial is likely the main driving force of rising pretrial incarceration rates in Hawaii, as well as across the United States. For example, the federal criminal justice system has seen the average time to case disposition grow from 60 days in the mid-1980s to nearly a year today -- a rise of over 600%.[10] If the PEW study results from Michigan were applicable to Hawaii, which warrants its own study, reducing the disposition time for the 17% of cases that last 30 days or more by just 20% could have a significant impact. This reduction could lead to a 16.4% decrease in pretrial incarceration. Cutting those times in half could lower pretrial jail costs by 41%. These reductions in disposition times would not negatively impact public safety; they would simply expedite the process of determining guilt or innocence, the critical turning point in a criminal case. In fact, reducing disposition times could enhance public safety, as swiftness of punishment -- along with the certainty of being caught -- is one of the two key evidence-based methods for increasing crime deterrence. For victims, the well-worn phrase "justice delayed is justice denied" underscores yet another reason why we must accelerate the process.

It is evident that the judiciary is not currently equipped to conduct the kind of robust bail hearings the ACLU envisions -- and perhaps that also needs to change. Achieving this would certainly require increased investment in the judiciary, something I would fully support. Custodial decisions in Hawaii should be grounded in thorough due process

overseen by a judge, not partially delegated to a confidential pretrial report generated by a computer program from Columbus, Ohio.

In practice, the judiciary may be overly relying on an algorithm provided by pretrial services as a shortcut to due process. Civil rights groups on the mainland have criticized this algorithm, first for being racially biased[11] and second for being excessively harsh, which often leads to higher bail amounts and burdens defendants with over-supervision during pretrial. This approach essentially sets them up for failure, as the necessary criminal interventions and services to address their criminogenic needs are not sufficiently available during this period. Moreover, if bail amounts are indeed set too high -- beyond the reach of third-party sureties -- this poses a significant issue. Defendants with high bail are likely to fall into the 30 days or longer category, where there is the greatest potential for reducing pretrial incarceration. This group is also the most likely to be released into the custody of a surety rather than on their own recognizance, which would be a more accountable solution to over-incarceration. [12] Such an arrangement involves a transfer of custody through a contract, rather than relying solely on a defendant's promise to remain crime-free and appear in court. As we know, not all defendants should simply be trusted. We need a middle ground for situations where trust is lacking and the solution lies in implementing incentivized and accountable personal sureties.

The examples cited by the ACLU reinforce the argument that this is not fundamentally a "money bail" issue. Rather, it highlights a lack of timeliness in case dispositions. The Kalief Browder case, cited by ACLU, has long been debunked as a bail issue. [13] In this case, a juvenile spent over two years at Rikers Island, New York, for a minor charge with a no-bail hold placed on him due to his probation for another minor offense. Keeping a juvenile on a misdemeanor charge under a non-bailable hold for two years is not a "money bail" issue. [14] In fact, Mr. Browder's family attempted to secure his release and had the funds to do so until the court recognized an error and imposed the no-bail hold. [15] Had the hold not been in place and "money bail" been available, Mr. Browder would likely have been released and his life would have continued. The other cases cited by the ACLU similarly illustrate this point. While it is true that pretrial detention harms individuals and must be minimized, the duration of that detention is the most destructive and costly aspect. The delay of a trial on a misdemeanor charge beyond the maximum sentence is a tragic failure of justice that could have been entirely avoided with the enforcement of a robust speedy trial rule.

If speedy trials and timely case dispositions are the constraints limiting the orderly processing of criminal cases as envisioned by the framers of the Constitution, it's crucial to ask: how are Hawaii's courts performing in this regard? Unfortunately, Hawaii has not submitted statewide data to the National Center for State Courts, thus there is no comparative data to assess how Hawaii is actually doing. A search of available online resources yields no information on the timeliness of case handling in Hawaii, particularly for defendants in custody. Additionally, there is no trend data to assess changes since Chief Justice Recktenwald noted in 2011 that delays were overwhelming the criminal process.

All those concerned about this issue should consider the American Bar Association's recommendation for differential pretrial case management. This means we must prioritize speeding up in-custody cases, even if it requires delaying out-of-custody cases in the absence of additional resources. That said, a comprehensive analysis of the current situation is sorely lacking. Without such an analysis, we risk blindly addressing the problem while potentially overlooking its most significant drivers. I would welcome the opportunity to be part of this comprehensive study, whether conducted by PEW

Charitable Trusts or another organization, as I believe a thorough examination of the system is essential for finding workable solutions to these challenges.

Over the past fifteen years, the belief that 'money bail' discriminates against the poor has gained prominence. This shift has overshadowed what was once a straightforward system of accountable sureties, which were responsible for taking private custody of defendants and ensuring either their return to court or payment of bail. The classic right to bail — allowing a person to post bail or remain in jail, a principle that dates back to before the Magna Carta — has undergone a significant shift in perception. It is now viewed as a civil rights violation rather than a mechanism meant to promote liberty. Appellate courts at both the federal and state levels have firmly rejected the legal right to affordable bail, acknowledging that while the ability to pay and financial resources are relevant factors in assessing excessive bail, they cannot be the sole determinants. Furthermore, concerns about equal protection can be effectively addressed through robust due process. [16]

The financial incentives inherent in bail transactions are crucial to consider. When the law focuses solely on the defendant's ability to post bail, it overlooks the role of third parties, who typically serve as the true sureties qualified by statute. This narrow focus reduces the motivation for defendants to show up in court because no third-party is held equally responsible for making sure they do. When private third parties make a guarantee, they are compelled to fulfill their obligations and face significant financial penalties if they fail to do so. In reality, very few defendants self-bail; in the vast majority of cases, a third party steps in to provide bail. Typically, these defendants cannot afford to post bail themselves, so a third party comes to their aid. Ignoring this distinction may lead to releases that lack incentives for appearance, even when a third party is available to take custody of the defendant at no cost to the state.

It is essential for communities, judges, lawyers and everyone in Hawaii to recognize this key fact: bail represents a transfer of custody from the defendant to their community, which is vouching for them, rather than a mere "purchase" of freedom. This institution is critical not only for protecting the rights of defendants but also for upholding the community's fundamental right to hold the government accountable, particularly when it fails to prosecute cases in a timely manner or abuses its power.

The ACLU argues that judges are overlooking unsecured bail as an alternative, but national research from the U.S. Department of Justice supports the notion that this option is no more successful than a release on own recognizance. [17] As a result, judges in Hawaii would be better off releasing most defendants on their own recognizance rather than setting unsecured bail that is unlikely to be collected.

Another important point to consider is that the ACLU of Hawaii and others are advocating for defendants to be released on the "least restrictive bail." This contrasts with the concept of least restrictive non-monetary conditions. In the context of bail reform, the issue of "least restrictive bail" has emerged as a frequent topic of appeal in New York's bail reforms, particularly because it lacks clarity and did not exist in common law until it was introduced legislatively in the 21st century. While the principle of least restrictive or least onerous conditions has been established for non-monetary release conditions for centuries, the term "least restrictive" has only recently been applied to bail amounts. Historically, the focus on bail has centered on whether it was excessive, rather than whether it was the least restrictive.

In conclusion, the institution of bail, supported by sufficient sureties, is designed to maximize defendants' freedom in the most accountable way possible, ensuring their

custody is entrusted to a surety. This institution has existed long before the modern era of mass incarceration. Transforming it back to a mechanism that promotes liberty instead of one seen as discriminatory against the poor is a critical issue to consider as we move forward with bail reform in Hawaii.

Reflecting on my fifty years of experience in this field, I am convinced that returning to the fundamental principles of bail and distinguishing between true bail issues and other challenges is the only viable path forward. We need a more efficient system for determining guilt that minimizes prolonged pretrial incarceration while maximizing both accountability within the judicial process and the freedom of defendants. The increasing disdain for the institution of bail supported by sureties has significantly contributed to the rise of generational mass incarceration. Revitalizing this institution in Hawaii is essential to addressing this pressing issue.

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[1] Hawaii Revised Statutes §804-1.

[2] *Stack v. Boyle*, 342 U.S. 1 (1951).

[3] *Reese v. United States*, 76 U.S. (9 Wall.) 13, 21 (1869).

[4] <https://press-pubs.uchicago.edu/founders/documents/amendVIIIs4.html> (last accessed October 15, 2024).

[5] *Taylor v. Taintor*, 82 U.S. 366 (1872).

[6] Jongwook “Wookie” Kim & Samantha McNichols, A Closer Look at Hawaii’s Bail Statutes and Practices, *Hawaii Bar Association Journal*, October, 2024, at 4.

[7] *Id.* at 11.

[8] https://www.courts.michigan.gov/48e56e/siteassets/committees,-boards-special-initiatives/jails/executive-summary-of-report_final.pdf

[9] <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/06/23/small-but-growing-group-incarcerated-for-a-month-or-more-has-kept-jail-populations-high>

[10] See <https://freedomdenied.law.uchicago.edu/report>

[11] <https://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>

[12] Helland, Eric & Tabarrok, Alexander, 2004. "The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping," *Journal of Law and Economics*, University of Chicago Press, vol. 47(1), pages 93-122, April.

[13] <https://www.themarshallproject.org/2015/06/09/no-bail-less-hope-the-death-of-kalief-browder>

[14] *Id.*

[15] Id.

[16] See *Bradley Hester v. Matthew Gentry, et al.*, No. 18-13894 (11th Cir. 2022) (“This is not discrimination against the indigent. All arrestees are presumptively entitled to pretrial release as soon as they make a showing that they will appear at trial—either by posting bail or by appearing at a hearing and attempting to show through other means that they will appear at trial.”).

[17] <https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf>



GUEST COLUMN: Easy release in a broken system led to tragedy

Jeffrey J. Clayton
Jan 19, 2025



This past weekend, terror broke out in downtown Denver as Elijah Caudill carried out a brutal stabbing spree along the 16th Street Mall, killing two strangers and injuring two others. Caudill, a man with a documented history of violent behavior and repeated failures to comply with court orders, was inexplicably free despite multiple pending charges and a judge's prior determination that he posed a substantial risk to the public. Released on his own recognizance without meaningful supervision, Caudill's unchecked freedom culminated in senseless violence that has left the city grappling with the devastating consequences of a broken judicial system.

Colorado law defines appropriate bail as “an amount” that is reasonably necessary to ensure the defendant’s appearance in court and protect the safety of individuals in the community. In the case of the senseless murders on the 16th Street Mall, releasing someone with such a criminal history and a record of failing to appear in court on what amounts to a “get out of jail free” card is, itself, downright criminal. Ultimately, the individual — whom a prior judge deemed a “substantial risk to the public” — was released on his own recognizance, allegedly to a state treatment program that lacked legal authority to take custody of defendants.

As reported, the case for which a warrant was issued for the defendant at the time of the stabbings involves a series of violent actions — contrary to Denver Police Chief Ron Thomas’ characterization of the defendant as non-violent. These actions include placing a woman in a chokehold, physically assaulting several individuals in jail and exposing himself, in addition to a prior stint in prison for assaulting a man with a knife.

When setting the bond, the Denver judge Kelly Cherry was required to consider the defendant’s criminal history to determine an amount sufficient to ensure public safety. His record included numerous factors that would have categorized him as high risk in any standard national risk assessment, including being rearrested in a prior case after failing to appear, after which he later served time in prison.

Despite this extensive history, Judge Cherry made a startling decision: imposing a bond structure prohibited by Colorado law. This practice, a routine yet illegal approach in Denver courts, allowed the defendant to post just 10% of the bond amount deemed necessary to protect the public. In this case, the bond was initially set at \$1,500, meaning the defendant could secure his release for only \$150. By doing so, the judge effectively deemed the defendant safe for release and likely to appear in court for what amounted to a trivial cash payment.

Because the defendant failed to raise \$150, he remained in jail. However, Judge Cherry inexplicably initiated a series of bail reductions, further discounting the bond. First, the judge reduced the bond to \$500, with 10% cash to the court required, and later lowered the bond even further — to just \$1 in cash. Ultimately, the court released the defendant on his own recognizance, coupled with a nominal, unsecured bond requiring a future payment of \$100 if and/or when he violated the terms of his release — a ridiculously meaningless promise with no real enforceability.

Denver District Attorney Beth McCann has implied that the defendant was released to a treatment program, but this is not true. Caudill was instead released to Bridges of Colorado, a state government commission with no legal authority to take custody of or supervise criminal defendants. It is worth noting that the district attorney, who sits on the commission’s board, was involved in this decision.

Caudill was released on his own recognizance, with the court relying solely on his personal promise that he would appear in court and remain crime-free. When it came time to grant this dangerous defendant a free pass from jail, did DA McCann's office object? Did the district attorney and her office, along with the Bridges of Colorado commission, report the violations and the warrant to the police? And did the police take any action on their own? Clearly and emphatically, the answer is no, no and no.

This tragic case highlights the devastating consequences of a broken system where public safety is compromised by negligent decisions and a disregard for the law. Two innocent lives are now lost — lives that would still be with us if those entrusted with upholding the law had done their jobs. Had the judge followed Colorado bail laws and District Attorney McCann objected to the improper bond decision, this senseless violence could have been prevented. The failure to act is not just a failure of oversight; it is a failure that has cost lives and it must be corrected before more lives are needlessly destroyed.

Jeffrey J. Clayton is the executive director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters.

Monday, February 10, 2025

Tennessee House to hold hearing on bail reform amendment



The Tennessee Capitol is seen, Jan. 8, 2020, in Nashville, Tenn. (AP Photo/Mark Humphrey, File)

NASHVILLE, Tenn. - The Tennessee House of Representatives is set to hold a hearing Wednesday to consider a potential amendment to the state constitution that would eliminate the state's long-standing right to bail for a broad range of offenses.

If enacted, the amendment would allow for people charged with offenses such as second-degree murder, aggravated rape, and terrorism to be held without bail. Supporters argue that this would enhance public safety by keeping high-risk defendants detained until their trials; however, opponents warn that the measure raises serious constitutional concerns, lacks transparency, and would impose significant financial burdens on Tennessee counties--potentially costing taxpayers over \$142 million a year in additional court costs and expenses.

Legal experts have also raised concerns about the amendment's vague language, which could leave voters unclear on the full impact of the changes. States that have implemented similar reforms, such as Maryland and New Jersey, have seen increased pretrial detention rates, longer case resolution times, and major cost overruns.

The upcoming hearing, scheduled for 9:00 Wednesday morning, will provide a platform for lawmakers, legal experts, and local officials to debate the potential amendment's impact on Tennessee's legal system and taxpayers.

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FOX13 Memphis News Staff



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Wednesday, February 12, 2025

STATE

Tennessee lawmakers renew efforts to reform bail rules with constitutional amendment

State lawmakers renewed a proposal to amend the state constitution so judges could deny bond to more suspects.



Credit: Lulla - stock.adobe.com
Tennessee flag waving on the wind

Author: Chris Salvemini

NASHVILLE, Tenn. — Fewer suspects may have the right to bail as their cases go through the judicial process if a proposal to change the Tennessee constitution passes.

Lawmakers brought back legislation to take away the right of people accused of terrorism, second-degree murder, aggravated rape of a child, aggravated rape, grave torture or some other crimes to access bail. The proposal would let judges decide whether suspects should be

given a chance at bail as their cases go through the judicial process, which could take years in some cases.

Judges would also be required to record their reasoning for giving or denying a suspect bail. Currently, most suspects are given bail if they are arrested, except for some exceptionally violent crimes.

Representative Kip Capley (R-Summertown) said the proposal is meant to "keep violent criminals behind bars." In January 2024, some Democratic lawmakers from the Memphis area also appeared at a news conference to tout the legislation, according to The Associated Press.

Jeffrey Clayton, the Executive Director of the American Bail Coalition, spoke on the proposal last year and raised concerns about it.

"The history of this constitutional amendment lasts for 809 years," he said while testifying to lawmakers last year. "The language in the Tennessee Constitution is called 'The Ancient Rule.' It dates to 1215. That language was written at the Magna Carta ... Really, it's to protect the presumption of innocence."

Lawmakers introduced the proposal during the last legislative session. It cleared the House of Representatives and Senate, but it must pass again this year before voters may see HJR 0049 on the ballot.

Before amending the state constitution, proposals must also get more "yes" votes than "no" votes in the popular vote, and the number of "yes" votes must be a majority of the total votes in the previous gubernatorial election.

The proposal passed a House subcommittee Wednesday morning with two votes against it — both were Democratic lawmakers. The proposal next heads to the House Judiciary Committee. If it passes the legislature again, the proposal will be put on a ballot for Tennessee voters.

Wednesday, February 12, 2025

major changes to Tennessee's court system



Photo by: WTVF

By: Chris Davis

NASHVILLE, Tenn. (WTVF) — Two fairly simple bills could make monumental changes to the Tennessee Constitution and the state's court system.

Amending Tennessee's Constitution, by design, isn't supposed to be easy. Both of these bills have already passed the 113th General Assembly. It also has to pass in the current 114th General Assembly. After that, the process still isn't over. Then it would be up to the voters, who could vote yes or no on the constitutional referendum during the 2026 Election cycle.

Victim's Bill of Rights

The first bill would let the victims of crimes to request a meeting with prosecutors, pretty much, whenever they'd like to meet. It would also let victims speak up during court proceedings if they wanted to participate.

NewsChannel 5 Legal Analyst, Nick Leonardo, says prosecutors would probably need extra funding and staffing to comply with this change.

"On its face, it seems like a wonderful idea. But if you look at it, and you look closely, it seems as though it'll be a whole lot more work for the District Attorney's office," said Leonardo. "It requires resources. OK? And these District Attorneys in Nashville are already overworked." Currently, the bill doesn't provide that extra funding.

Bond Reform

The other constitutional amendment allows judges to revoke bond for charges involving terrorism, rape and other violent offenses. Currently, the Tennessee Constitution only allows for this in death penalty cases.

"This will reduce the risk of them posing a threat to their victims and others in the community," said Rep. Kip Capley, R-Summertown, during a committee hearing on the bill.

In the 113th General Assembly, when this bill first came through the legislature, representatives for bail bondsmen testified against this move.

"There's been no academic research that supports the use of preventative detention as a defective crime control policy, in fact there's a litany of articles that suggest it doesn't have an impact on crime control policies," said Jeffery Clayton with the American Bail Coalition, when he testified two years ago.

While some other states have passed similar provisions, Leonardo thinks this change could trigger legal challenges. "That runs afoul to the U.S. Constitution as well as the Tennessee Constitution," said Leonardo.

Both bills passed their first hurdle, this legislative session, in the House Criminal Justice Subcommittee.

Wednesday, February 12, 2025

WKRN articles

TENNESSEE POLITICS

Judges could deny bond for certain violent offenders under proposed constitutional amendment

by: Tori Gessner



NASHVILLE, Tenn. (WKRN) — Should some violent offenders be denied bail? Tennessee voters would have the final say if a proposed constitutional amendment passes this legislative session.

The resolution, which already passed last legislative session, is a proposed constitutional change to give judges the power to deny bond for offenders charged with certain violent crimes, including acts of terrorism, second-degree murder, and aggravated rape.

"[It] seeks to do one of the most democratic things that we as a body can do, and that is to allow the voters of Tennessee to decide whether the perpetrators of certain egregious violent crimes can be held in jail without bond, and currently the constitution only allows that for capital crimes," Rep. Dan Howell (R-Cleveland) said in April 2024 to lawmakers on the House floor.

Since it would require a change to the constitution, the measure needs to pass again this legislative session before going on the ballot for a vote.

News 2 has covered multiple stories of criminals being released from jail on low or no bond, only to commit more violent crimes. Various police agencies have described the issue in the past.

“We make the arrests, the individual goes into the system, and they’re released,” Chief John Drake of the Metro Nashville Police Dept. said in April 2024.

“That’s a problem we’re having is people who are already charged are out on bond committing crimes, and at some point, the legislature will have to fix this problem,” Chief Kenny Ray with the Ashland City Police Dept. told News 2 in June 2024.

The proposal sailed through the House Criminal Justice Subcommittee Wednesday, 7 to 2, with no questions or debate.

However, Jeff Clayton, executive director of the American Bail Coalition told News 2 there could be some resistance ahead.

“It’s a fundamental change to Tennessean’s constitutional rights to bail,” Clayton said. “If you’re charged as a first-time offender under an 85% charge and a prosecutor moves to deny bail, you’re going to be sitting there perhaps up to a year, and that’s a problem if you’re innocent,” he continued. “We think this needs to be rethought and target third-strikers and people like that who have already been convicted in the system multiple times, and then it’s time to deny bail.”

Clayton argued the state could also ban judges from granting free bail for violent offenders, [which has happened in Memphis](#). One Shelby County [criminal court judge resigned amid criticism](#) for releasing multiple murder suspects from jail on their own recognizance, instead of issuing a cash bail.

Clayton told News 2 judges in other states, like Texas, are barred from releasing serious, violent offenders on “free bail.”

“They’re keeping serious offenders from falling out the bottom end of the system,” Clayton said. “In this case what we’re doing is, we’re taking people who are getting high bails anyway, \$1 million, \$2 million, and just denying bail; probably bails that many of them aren’t posting anyway. Really, that’s the issue is that you have multiple-time repeat felony defendants getting out in places like Memphis on free bail with no accountability.”

In order for the resolution to pass this legislative session, it needs to receive the majority of votes in both the House and Senate. Then, it would be put on the ballot in Nov. 2026, where it would need to receive the majority of the total number of votes in the election to become official.

Thursday, February 13, 2025

General Assembly hears two proposals to change Tennessee's Constitution

By Benjamin Smith, Daily Memphian



Tennessee House of Representatives Speaker Cameron Sexton, R-Crossville, is sponsoring both HJR0048 and, HJR0049. (Ian Round/The Daily Memphian file)

NASHVILLE — Two resolutions to change the Tennessee State Constitution saw their first day of deliberation in the House Criminal Justice Subcommittee this week.

The first resolution, HJR0048, proposes an amendment to expand the rights of crime victims. The second, HJR0049, would remove a defendant's right to bail for certain violent offenses.

Tennessee House of Representatives Speaker Cameron Sexton, R-Crossville, is sponsoring both resolutions.

HJR0048

HJR0048 adds provisions and clarifications to Article I, Section 35 of the Tennessee State Constitution, expanding the rights of victims during criminal proceedings.

For example, it provides the victim with the right to “reasonable protection” from the accused, and it expands the victim’s right to a “full and timely” restitution from the offender.

In addition, the bill codifies the victim’s right “to be treated with fairness for the victim’s safety and dignity.”

The legislation would also give the victim the right to be informed of the accused’s release date and the minimum length of their sentence.

The resolution is structured similarly to Marsy’s Law, a model of constitutional amendments that enshrine an expansion of victims’ rights in state constitutions. Legislation identical or similar to Marsy’s Law has been adopted by 12 other states.

In Tennessee’s General Assembly, Sexton’s Marsy’s Law resolution is widely supported by both Republicans and Democrats.

“Marsy’s Law helps alleviate fear by giving victims the right to be notified when their abuser is released from custody or when key developments occur,” said state Sen. Brent Taylor, R-Memphis, in an October 2024 guest column published by The Daily Memphian. “It also empowers survivors to ensure their voice is heard throughout their legal journey by giving them a platform to express the impact of violent crime on their lives and families.”

HB0048 saw broad support in the House Criminal Justice Subcommittee meeting Wednesday, Feb. 12, passing unanimously with the help of bipartisan votes, including two from Rep. Gabby Salinas, D-Memphis, and Rep. Jason Powell, D-Nashville.

The resolution moves forward to the full House Judiciary Committee, where it is scheduled for a Feb. 19 hearing.

In order for a proposed constitutional amendment to become law in Tennessee, it must pass through the state legislature in two concurrent sessions. In the first session, the resolution requires a simple majority vote; in the second, it requires a steeper, two-thirds majority.

Last session, the House voted 92-0 to pass the victims’ rights bill.

Every state except Delaware requires voters to approve any proposed constitutional amendments that pass the General Assembly. So, if this bill passes in the current session, it will be placed on the ballot during the 2026 general election, where Tennessee voters will have the final say in the matter.

HJR0049

HJR0049 would remove a defendant’s right to bail for certain violent offenses “when the proof is evident or the presumption great.”

The amendment would apply to a capital offense; an act of terrorism; aggravated rape; aggravated rape of a child; second-degree murder and any other offense where the defendant would be required to serve at least 85% of the sentence if convicted.

HJR0049 didn’t receive the same bipartisan support as the victims’ rights resolution during the Criminal Justice Subcommittee Hearing Wednesday. But it passed with seven out of nine votes and will head to the Judiciary Committee. It’s likely this resolution will be heard next week alongside HJR0048.

If the resolution passes the current session, it will also need to pass in the 115th General Assembly before it can make its way voters' ballots.

Despite a two-thirds majority being a steeper hill for the resolution to climb, Democrat support could be ultimately unnecessary in passing the legislation. With Democrats occupying just 24 of 99 seats in the House and six of 33 in the Senate, it's possible a steadfast Republican coalition could place the question on the 2028 ballot without needing any bipartisan support whatsoever.

Friday, February 14, 2025

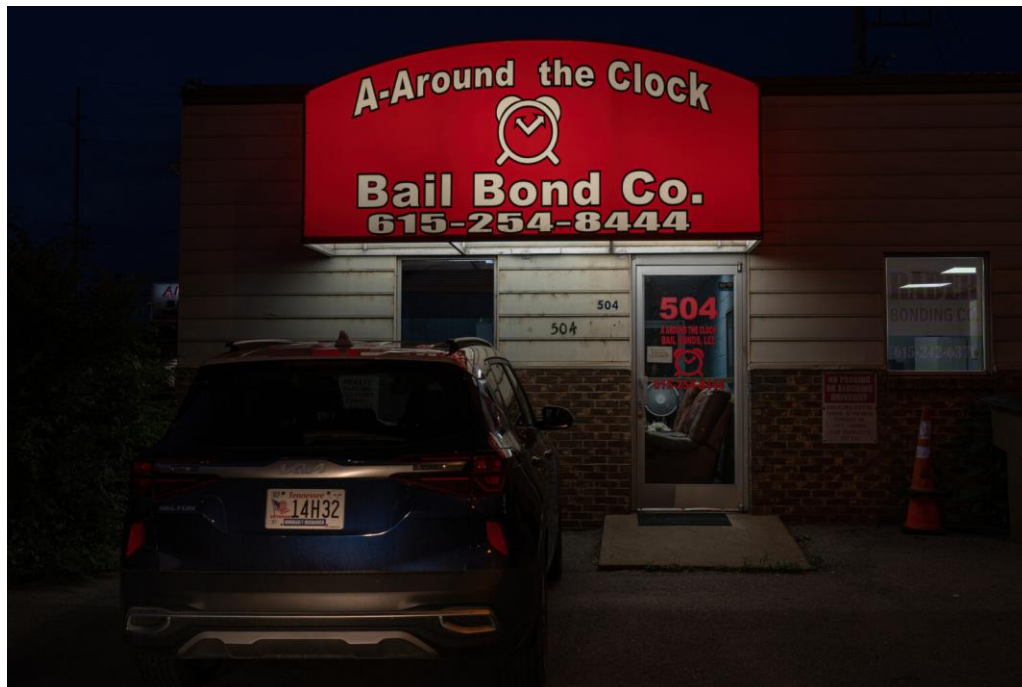
COMMENTARY

Stockard on the Stump: Sexton and bail bond industry headed for collision

Attorney calls constitutional amendment unconstitutional; governor celebrates voucher bill signing with private school kids



SAM STOCKARD



An attorney for the bail bonds industry is questioning the constitutionality of measure spearheaded by House Speaker Cameron Sexton. Photo: John Partipilo)

The bail bond industry is questioning the constitutionality of a proposed amendment to Tennessee's Constitution that would give judges the discretion to decline bail for some 75 violent crimes.

Michael McClaren, attorney for the American Bail Coalition, sent a letter to Attorney General Jonathan Skrmetti and Senate Majority Leader Jack Johnson challenging the measure's legality and saying it would have "unintended and detrimental consequences" for the state. He stopped short of requesting a legal opinion.

Sponsored by House Speaker Cameron Sexton of Crossville, the amendment would remove the right to bail for capital offenses, terrorism, second-degree murder, aggravated rape of a child, aggravated rape, grave torture and a litany of offenses for which a defendant would have to serve at least 85% of their sentence under a new "truth in sentencing" law.

Under the state Constitution, capital offenses are the only crime for which bail can be denied, and this would be a massive expansion, although Sexton and House Majority Leader William Lamberth say only a few repeat offenders would be affected.

People want to make sure if you're committing violent crimes, especially if you've done two, three or four, there's an option for you not to get back out.

McClaren's letter says the proposed amendment restricts the right to bail and "will deny voters and citizens of Tennessee procedural due process" because it fails to give "clear notice" of what would be prohibited.

"A law is considered unconstitutionally vague if it is so unclear that people of common intelligence must guess at its meaning and differ as to its application," McClaren's letter says. More pointedly, he says most Tennesseans don't know which crimes require 85% of a sentence to be served.

(In short, the proposed amendment doesn't "explain about the 50 ways." "Just slip out the back Jack / Make a new plan Stan / You don't need to be coy Roy / Just get yourself free." Sorry for the Paul Simon lyrics, but they seemed to fit.)

While the bail bond industry's opposition is predictable, it also could be considered practical, as it argues this move could fill up county jails and force local governments to spend millions of dollars to hold defendants while they await trial.

Sexton, the prime sponsor of House Joint Resolution 49, says the bail association is claiming the amendment creates a "mandate" for denying bail on more than 70 offenses, which, he adds "is absolutely false."

"People want to make sure if you're committing violent crimes, especially if you've done two, three or four, there's an option for you not to get back out," Sexton says.

He questions whether someone has to commit murder before they're ineligible for bail. "I think we're better than that, and I think the judges with the discretion will make the best decision," he adds.

The bill passed a subcommittee and is headed for the House Judiciary Committee in a couple of weeks.

The question, though, is not necessarily whether the legislature should act as jury, judge and executioner, although that should be the overriding concern.

In this case, it's whether people are going to know what they're voting on when they go to the ballot box in 2026.



Republican House Leadership from left Rep. Jeremy Faison,, Speaker Cameron Sexton and House Majority Leader William Lamberth discuss a constitutional amendment to reform the state's bail system. (Photo: John Partipilo/Tennessee Lookout)

Lawmakers approved the constitutional amendment in 2024, and it must receive a two-thirds vote by the legislature before it can go on next year's ballot where it must receive a majority vote of those who participate in the gubernatorial election.

Sexton must have a great deal of confidence in voters, saying the question will reference voters to the section of the code where the crimes are listed, even though the state law won't be on the ballot with the constitutional question.

His disdain for the bail industry is much clearer than the proposed amendment.

"It's unconstitutional because people can't see what the crimes are? Is that what the bail association is saying? I don't understand the unconstitutional aspect of that," Sexton says.

Yet he hit it right on the head. If people don't know what they're voting on, that could be a problem. It also causes long lines at precincts when people start scratching their heads in the voting booth. But that's another matter.

Some lawmakers are hesitant to support any constitutional amendments. But this legislature is starting to look like California's State Assembly, which is in the habit of legislating through ballots.

Victory lap

Gov. Bill Lee signed his private-school voucher bill into law Wednesday surrounded by – you guessed it – private school students.

Fawning lawmakers, lobbyists and parents attended the Capitol confab, as well, amid a cacophony of cheers for "school choice."

If someone gave me \$7,300-plus every year for doing nothing extra, I might cheer too.

When your vote is 54-44 (one of which was miscast), putting you barely above the constitutional requirement in the House to adopt a bill, that is hardly a mandate. The fix was in, considering

the state's own report said two-thirds of the 20,000 students who would take the money next school year are going to private schools already.



Gov. Bill Lee signs his signature private school voucher law, complete with private school students. (Photo: John Partipilo/ Tennessee Lookout)

Lee is moving at warp speed to set up the voucher system, even though questions continue to be raised about the “hold harmless” provision for public school districts that lose students and whether the new “entitlement program” will send the state over a “fiscal cliff.”

Despite complaints from Republican and Democratic lawmakers about the implications of starting a new education program, Lt. Gov. Randy McNally reminded us Thursday the legislature will decide every year whether to fund increases in the program. It's supposed to grow 3% annually with K-12 public schools funding. But the legislature has ultimate oversight.

Says McNally, “The legislature has always been conservative, especially since Gov. Ramsey came on board, and we won't spend money we don't have, and we won't play games with money.”

(Think about that as you're traversing the Lieutenant Governor Speaker of the Senate Ron Ramsey Tunnel and pondering, “Ron who?”)

OK, if we can't play games, can we just give money away?

Roll up, roll up for the toilet patrol

Republican Rep. Gino “Bathroom Bill” Bulso brought us the latest version of potty police-dom this week, pushing a bill through the Education Administration Subcommittee that would force public and private schools to set up separate restroom and changing facilities for transgender kids.

The state law is needed, according to Bulso, because he received a complaint from a parent.

Despite being told he was “mean” and drawing questions from fellow Republicans who said they had problems with making private schools spend money, Bulso pushed them to a vote in a room packed with jeering LGBTQ+ supporters.

While Republicans on the committee initially appeared ready to deep-six the bill, giving Bulso the option to postpone and work toward a better solution, they voted otherwise.

The bill passed, and we’ll see a replay of this soon in a House committee room near you.
A love-fest just in time for Valentines Day

Eleven House Democrats walked out of Lee’s State of the State address this week in a show of protest against his policies. That left 13 or so House Democrats in the chamber and six Senate Democrats to listen to the profundity.

Hallway talk is that the outnumbered Democrats aren’t getting along too well, which could make it even harder than normal to accomplish anything.



A group of Democrats walked out of Gov. Bill Lee’s State of the State address on Monday. From left: Reps. Justin Jones, Gabby Salinas, Gloria Johnson, Joe Towns, Sam McKenzie, Vincent Dixie, Shaundelle Brooks, Jason Powell and Yusuf Hakeem. (Photo: John Partipilo/ Tennessee Lookout)

Yet House Democratic Caucus Chairman John Ray Clemmons says there was no dissension in the ranks before the walkout.

“We are unanimous in our opposition to this governor’s misplaced priorities and his policies. His comments with regard to immigration, his political pandering, his bragging about voucher bills, we all unanimously oppose those policies,” Clemmons says.

House rules don’t prohibit members from leaving the chamber during the governor’s address, Clemmons adds, giving them a chance to show “solidarity” in opposition.

That may be true. But if folks such as the poor press corps have to sit through the posturing, then everybody else should too.

Space and time

The motto for the governor's next budget is "Innovate 2025," not to be confused with Project 2025, the blueprint for the new world order.

All through the document, readers kept looking for innovation, such as borrowing \$1 billion for collegiate capital projects, usually a no-no for the state, spending \$450 million to create a new private-school "entitlement," creating a \$5.5 million immigration enforcement bureau that can operate confidentially and the list could go on.

He taught us that space and time — once thought to be fixed — are actually interconnected and dynamic, relative to one another.

– Gov. Bill Lee on physicist Albert Einstein

Finally, though, it dawned on us simpletons that the answer was in Lee's words at the State of the State when he spoke about taking a course on Albert Einstein's work.

"He taught us that space and time — once thought to be fixed — are actually interconnected and dynamic, relative to one another," Lee said.

All we have to do is "challenge conventional thinking" and prove it wrong, he said.

If only he could persuade the Tennessee Supreme Court to rewrite the theory of relativity. All it takes is a couple more appointments.

*"The problem is all inside your head," she said to me / "The answer is easy if you take it logically." **

**"Fifty Ways to Leave Your Lover," Paul Simon*

Monday, February 24, 2025

Resolution to Amend Tennessee Constitution Allowing Judges to Refuse Bail to Violent Defendants Would Not Lead to Overcrowded Jails, Reporter Says

Kaitlin Housler



Tom Pappert, lead reporter at **The Tennessee Star**, said a resolution in the Tennessee General Assembly that would amend the state's constitution to allow judges the discretion to refuse bail to defendants facing certain charges would not lead to overcrowding in jails across the state.

Senate Joint Resolution 25 would modify the Constitution of Tennessee to allow judges to refuse bail to defendants accused of capital offenses, acts of terrorism, second degree murder, aggravated rape of a child, aggravated, rape, and grave torture, as well as those who face charges for which the defendant "could not be released prior to the expiration of at least eighty-five percent of the entire sentence imposed."

If passed by both the Tennessee Senate and House of Representatives by a two-thirds majority this legislative session, the resolution will be presented to voters on the 2026 statewide general election ballot for Tennesseans to pass or reject.

While the resolution has earned support from Republican leadership in the General Assembly, one member of the party – State Senate Judiciary Chairman Todd Gardenhire (R-Chattanooga) – has publicly opposed the resolution, arguing that the proposed constitutional change would result in rural county jails being overwhelmed with inmates.

Pappert, however, **disputed Gardenhire's claim**, explaining that the increase of inmates that would be generated by the resolution seems unlikely to overcrowd county jails throughout the state based on data collected from the Tennessee Bureau of Investigation and Tennessee Department of Corrections.

“When you break it down, this would have resulted in the year 2022 which is the most recent year of arrest data from the Tennessee Bureau of Investigation; just over 9,000 total new people were eligible to have their bail denied. The Department of Justice has told us that’s about 25 percent of the time that a judge will actually say, ‘I’m denying you bail...on a non capital murder case.’ So that takes us down to about 2,200 people,” Pappert explained on Monday’s edition of ***The Michael Patrick Leahy Show***.

When capital murder cases are taken into consideration, Pappert said the number of defendants eligible for their bail to be denied increases to approximately 3,600 – which is far below the 5,000 open beds in jails across the state.

“So then you say capital murder cases were already eligible for bail to be declined in the state of Tennessee. That’s what the Constitution says today, so let’s take in and figure out how many of these are second degree murder. Again, the Department of Justice says about half of all murder cases end up being prosecuted as second degree versus first degree murder. So again, about half of those, it ends up getting in a very high end scenario. A total of 3,600 people could have been denied bail or would have or could have potentially been denied bail had this been in place in 2022,” Pappert said.

“The Tennessee Department of Corrections keeps tabs on the jails throughout the state and as of December, there were about 5,000 open beds across the state. Now, of course, there’s overcrowding in Memphis, there’s overcrowding in Nashville, but across the state, jail cells had room. Todd Gardenhire says he’s mostly concerned about rural jail cells. Those are some of the jails that appear to have the most room,” Pappert added.

The resolution will be debated among the Senate Judiciary Committee on Tuesday.



Tuesday, February 25, 2025

Proposed amendment to remove bond option for serious crimes moves forward in TN

This amendment would give judges the power to deny bail to people charged with violent crimes.

By Caleb Wethington

NASHVILLE, Tenn. (WSMV) - An amendment proposal is making its way through the Tennessee legislature that would automatically deny bail for several egregious crimes.

On Tuesday afternoon, the proposed amendment was discussed during the Senate Judiciary Committee and was recommended for adoption. This amendment would give judges the power to deny bail to people charged with violent crimes.

It will now go to the full Senate floor.

The resolution calls to replace section Article I, Section 15 of the Constitution of Tennessee, which states the following:

“That all prisoners shall be bailable by sufficient sureties unless for capital offenses, when the proof is evident, or the presumption great. And the privilege of the writ of Habeas Corpus shall not be suspended unless when in case of rebellion or invasion, the General Assembly shall declare the public safety requires it.”

The section would be replaced with the following:

“All prisoners shall be bailable by sufficient sureties unless for the following crimes:

- A capital offense
- An act of terrorism
- Second-degree murder
- Aggravated rape of a child
- Aggravated rape

- Grave torture and any other offense for which a defendant, if convicted, could not be released prior to the expiration of at least 85% of the entire sentence imposed.

SJR25 states that in any case that bail for any of the offenses listed above is granted or denied before conviction, the judge or magistrate must place in the record their reasons for granting or denying bail.

Wednesday, February 26, 2025

Gardenhire opposes constitutional amendment to bail rights carried by GOP leadership

by Sarah Dolgin



Sen. Todd Gardenhire, R-Chattanooga, listens during a meeting of the Senate Judiciary Committee during a special session of the state legislature Jan. 28, 2025, in Nashville. (AP Photo/George Walker IV)

NASHVILLE -- A Republican senator from Chattanooga opposed an amendment to Tennessee's constitution that would expand a judge's ability to remove a defendant's right to bail for certain offenses.

The resolution to amend the constitution, sponsored by Senate Majority Leader Jack Johnson, R-Franklin, was brought before the senate judiciary committee Tuesday afternoon and recommended for adoption, 6-3, after more than an hour of debate and testimony.

The state constitution currently gives all individuals the right to bail unless charged with a capital offense. In Tennessee, the sole capital offense is first-degree murder.

Johnson said the current law ties the hands of judges by only giving them discretion to deny bail for violent offenders charged with first-degree murder.

State Sen. Todd Gardenhire, R-Chattanooga, chairs the committee and voted against the resolution alongside two Democratic senators from Memphis.

Johnson's amendment would allow judges to remove the right to bail for an act of terrorism, second-degree murder, aggravated rape of a child, aggravated rape and grave torture "when the proof is evident or the presumption great," according to the resolution.

It would also allow judges to remove the right to bail for "any offense, as of Nov. 3, 2026, for which a defendant, if convicted, could not be released prior to the expiration of at least 85% of the entire sentence imposed."

In 2022, a "truth in sentencing" bill passed, requiring individuals convicted of certain violent crimes to serve 100% of their court-imposed sentences before becoming eligible for parole. It includes a provision that allows some convicted of other felonies to reduce their sentences to 85% if they participate in prison programs.

TESTIMONY

Nick Wachinski, a legal expert from Pennsylvania who testified against the measure, took issue with the last part of the amendment about offenses that could be included by November 2026. If the resolution passes, Wachinski said, legislators could technically change the laws that determine the list of offenses up until the November 2026 gubernatorial election when it would be on the ballot for voters.

Wachinski also said that it was a question of whether a constitutional amendment could simply refer to a body of laws, or if it would have to include the specifics of that law.

"Most voters are not going to have the information in front of them when they're voting about the list of crimes that is in that truth-in-sentencing statute," Wachinski said by phone. "So they're going to be voting on the 85% without actually having a list of qualifying crimes."

Rafael Mangual, a Manhattan Institute fellow who testified in favor of the resolution, said violent offenses are often committed by individuals on release while awaiting disposition of a prior case.

"Many of these serious crimes could have been avoided," Mangual said, "if judges in the state had been given the discretion to exercise their judgment and determine whether it would be appropriate to release particularly risky defendants prior to the dispositions of their cases."

Those in opposition to the resolution also said it posed risks to civil rights, describing the state's act of terrorism statute as too broad.

"What do Jefferson Davis, the L.A. Watts rioters, Johnny Cash, Martin Luther King Jr., the civil rights protesters and the Jan. 6 protesters all have in common?" asked Jeffrey Clayton, executive director of the American Bail Coalition. "What they have in common is they would face detention and probably be detained under this legislation."

Preventative detention, or incarcerating defendants awaiting trial, would also be costly, the opposition said.

The fiscal note details \$9,400 in publishing costs to add the constitutional amendment to the ballots.

State Sen. London Lamar, D-Memphis, also opposed the measure and said the fiscal note doesn't reflect anticipated costs to local prisons.

Lamar said it is valuable for lawmakers to reflect on the burden the preventative detention would put on local jails. She said the Shelby County Jail, in her district, is already at maximum capacity.

"I couldn't possibly be in a position to give you an estimate of what the impact would be fiscally," Mangual said. "What I would say is that those costs should not ever be considered in a vacuum. They should be considered alongside the cost of the crimes that would also be avoided as a result."

Mangual said crime has costs on society and government, using economic losses to victims as an example.

GARDENHIRE VOTES NO

Gardenhire said the cost of implementing the amendment needed to be qualified and that he's heard from sheriffs who are afraid their facilities would become overcrowded.

He also said Tennessee jails are having trouble hiring staff, taking a jab at Gov. Bill Lee's priorities.

"So this administration -- and I hope you're listening, Mr. Administration," Gardenhire said, "if you're not going to fund these things, don't allow these kinds of bills to come in front of us." Gardenhire said Johnson's resolution was well-meaning and that the jail issues were not his problem.

"If we're going to incarcerate all these people for a long period of time -- and I'm not saying they don't deserve it," Gardenhire said. "I'm just saying somebody needs to grab a hold of you know what and fund these things."

In 2022, Lee launched a \$100 million violent crime intervention fund, which included the creation of a statewide network of training programs for correctional officers, \$4 million in professional development programs for local correctional officers and \$25 million in grants for crime and recidivism reduction programs in local jails, according to the governor's office website.

Lee's office did not immediately respond for comment.

HOUSE RESOLUTION

On Wednesday, an identical resolution carried by House Speaker Cameron Sexton, R-Crossville, came before the house judiciary committee and passed, 17-2. It was referred to the Finance, Ways and Means Committee.

State Rep. Gloria Johnson, D-Knoxville, voiced concerns about the list of offenses being subject to change after lawmakers vote on the measure.

"I have a problem voting for something," Johnson said, "that I don't know the full realm of what is potential to be the offenses that are included."

Sexton said capital offense in the current constitution is unknown until something is added and said someone opposing the constitutional amendment for that reason would likely have voted against the original text in the first place.

The resolution would need to pass both legislative bodies by a two-thirds vote to come before voters in the Nov. 3, 2026, election. If it makes it onto the ballot, the amendment will become part of the constitution if it gets a majority of the total votes in the gubernatorial race.

Thursday, March 6, 2025

ALLEGHENY COUNTY

10 years after 'Bukit' died, his legacy is getting others out of jail

Bella Markovitz



It started in 2019 with a PayPal link and less than \$5,000. It's grown into the only community bail fund in the Pittsburgh region.

Bukit Bail Fund supports people held for trial at the Allegheny County Jail by posting bail at no cost to the defendants. Like similar efforts across the country, the fund's organizers say their work is a way to address injustices in the criminal justice system.

"Being an abolitionist organization means being care-oriented when it comes to harm," said Eli Namay, a volunteer with Bukit. "These institutions [jails and prisons] attempt to prevent us from organizing for a truly democratic, egalitarian society. This is why it is imperative we take bail fund and prisoner support work seriously, not only to reduce harm in the immediate term, but as part of a larger movement ecology aimed at growing a world based on care for both people and planet."

Unlike companies that specialize in posting bail for people, Bukit doesn't assess the risk of a person failing to show up for their court date. If a judge deems a person is eligible for bail, Bukit bails people out of jail as funds are available, on a first-come, first-served basis through a revolving fund that's replenished when people make their court dates.

"We're not in a position to make those evaluations," said Edwin Everhart, a volunteer with Bukit.

“We're not interested in making those evaluations.”

The business of bail

The purpose of cash bail is to secure someone's release from jail and to serve as the security someone puts forward to encourage their return to court. Just one state — Illinois — has eliminated cash bail, though some other states are curtailing its use.

Grassroots bail funds have emerged in recent years as an alternative to for-profit companies, which charge people a nonrefundable fee — a percentage of the bail — in return for assuring they appear in court at the appointed time.

Unlike companies, bail funds often operate through community donations, sometimes as nonprofit organizations, and sometimes, like Bukit, as a collective of like-minded residents. While the groups are decentralized, the National Bail Fund Network lists more than 50 such funds throughout the country.

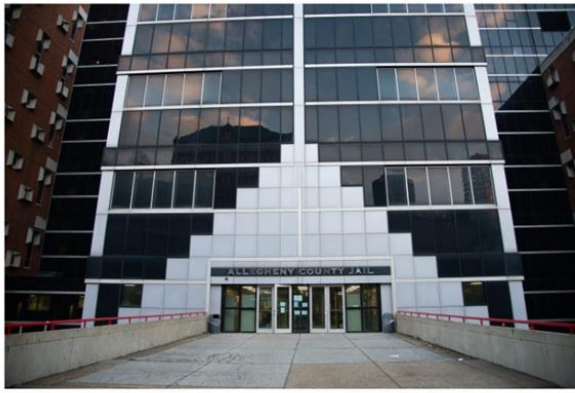
University of Pittsburgh law professor David Harris said when people are detained pretrial, they can lose employment, a place to live, and even access to their children. Due to these concerns, people who cannot afford bail sometimes plead guilty to charges which they otherwise wouldn't “because that's the only way to get out right away.”

“So they build up a criminal history sometimes for things they did not do, just because otherwise they're going to be held because they don't have the bail money,” Harris said.

Across the country, funds like Bukit have been the subject of both praise and criticism. In Georgia, a federal judge blocked part of a law that would make it impractical for community-based bail funds to operate. A measure that could have made it difficult for bail funds to operate in Pennsylvania was proposed in 2021, but never made it to a vote.

Community-driven funds have been the target of criticism for bailing out people who may present a danger to the public. The Minnesota Freedom Fund, for example, came under fire in 2021 for bailing out a man arrested on a domestic violence charge, who then was charged in a fatal road rage shooting.

Of the 31 cases that Bukit Bail Fund supported from July to December 2024, 23 people made their court dates and eight did not, according to information provided by Bukit. The information they provided showed that most bail amounts ranged from \$100 to \$5,000.



The Allegheny County Jail on Tuesday, Feb. 25. Amaya Lobato Rivas / Next Generation Newsroom

Who decides who gets bailed out?

Sarah Linder Marx, senior deputy director of public outreach and staff development at the Allegheny County Public Defender's office, said cash bail is a "complicated and divisive topic," partially because the way it is used varies.

"It depends on the magisterial district justice who sets bail, so it can vary wildly," she said. "Cases that are violent may have a cash bail or not."

In Pennsylvania, judges can consider factors such as the defendant's employment status, criminal history, community ties, and estimated risk of not returning to court. In some cases, judges determine that a defendant is not eligible for bail.

Magisterial district judges are guided by the Rules of Criminal Procedure criteria, said Joseph J. Asturi, director of government affairs-media relations for the Fifth Judicial District of Pennsylvania.

Asturi said he was not aware of how many, if any, Allegheny County magistrates choose not to use cash bail. At least one, Xander Orenstein, has operated without setting cash bail.

Defendants or families can pay bail, but when those resources aren't available it often falls to companies that assess the risks before they write a check.

The American Bail Coalition is a trade association made up of bail insurance companies; the organization also includes bail agent members. Insurance companies underwrite the financial guarantees made by the bail bondsman, said Jeff Clayton, executive director.

"So if I'm your bail bondsman, you call me and I decide whether I want to post your bond or not," Clayton said. "The role of insurance companies is to decide whether to underwrite the amount that the bondsman is posting for you."

Within the industry, companies usually evaluate who the co-signer is as well as the defendant's background and criminal record before they decide to make a contract with them, Clayton said. The most important factor is whether there is a prior record of failure to appear in court, he said. Grassroots bail funds do not charge nonrefundable fees or do background checks on the people they bail out, unlike bondsmen and bail bonds companies.

'He wouldn't have died there'

Bukit Bail Fund's work was inspired by a man who died in 2015, less than 48 hours after he arrived at the Allegheny County Jail.

Frank Smart Jr., 39, was arrested the evening of Jan. 3, 2015, on charges of forgery, theft, marijuana possession, and conspiracy, according to a criminal complaint.

Smart, known to friends as "Bukit" died Jan. 5 after being deprived of his anti-seizure medication and, during a resulting seizure, being restrained by corrections officers in the jail, according to a July 2017 report by federal Magistrate Judge Cynthia Reed Eddy. Allegheny County paid \$950,000 to settle the lawsuit filed by Smart's family.

His mother, Tomi Harris, started the Bukit Bail Fund along with her son's friends and community residents.

"If he could've made bail, he wouldn't have died there," said Harris, of Verona. "He would still be here."

Though Harris is no longer directly involved in the fund's day-to-day operations, she supports the group's mission.

Milica Bogetic joined the group shortly after the bail fund was formed and helped the group start posting bond.

Bogetic, who worked as a criminal defense investigator at the state and federal level for about a decade, said she saw firsthand how bail can be a "major limitation" on the outcomes of people's cases.

"The outcomes of the folks who are outside fighting their cases from their community is so much better," Bogetic said. In her experience, she said that "if everyone was out [of jail] fighting their cases, there would be a lot more equity in the results and dispositions of cases."

Bogetic partially attributes these results to the difficulty detained people have communicating from inside a jail. The lockup isn't the best place to review sensitive legal documents, she said.

If incarcerated persons want to participate in planning their defense, their options are limited to in-person visits contingent on the availability of their lawyer, talking by phone, and talking on video calls through the inmate tablets, Bogetic said.

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If the client is out of jail, they can also bring an "eyewitness or supportive family member" to help their lawyers "get really useful information that we otherwise wouldn't be able to review and share," Linder Marx said.

David Harris, the Pitt professor, said the cash bail system continues to be used because some people in the system like this tool.

“There are people who want to have the ability to hold people inside in pre-trial confinement, because they see that as a way to force a plea bargain out of somebody,” Harris said. “They see this as a way to protect the community, even though there are other ways that can be done that are just as effective for police and prosecutors.”

While Bukit grew using online donations, it no longer accepts funds that way. Today, Bukit organizers use money from a fund that is replenished when people make their court dates, to assist other people eligible for bail. They are also able to accept donations via checks.



Besides posting bail, Bukit Bail Fund and Our Streets Collective volunteers table outside of the Allegheny County Jail on Tuesdays. There, they distribute food to people being released from jail and people from the Second Avenue Commons shelter, which is located on the same block. Amaya Lobato Rivas / Next Generation Newsroom

Thursday, March 6, 2025

EQUITY

10 years after 'Bukit' died, his legacy is getting others out of jail

Bella Markovitz



It started in 2019 with a PayPal link and less than \$5,000. It's grown into the only community bail fund in the Pittsburgh region.

Bukit Bail Fund supports people held for trial at the Allegheny County Jail by posting bail at no cost to the defendants. Like similar efforts across the country, the fund's organizers say their work is a way to address injustices in the criminal justice system.

"Being an abolitionist organization means being care-oriented when it comes to harm," said Eli Namay, a volunteer with Bukit. "These institutions [jails and prisons] attempt to prevent us from organizing for a truly democratic, egalitarian society. This is why it is imperative we take bail fund and prisoner support work seriously, not only to reduce harm in the immediate term, but as part of a larger movement ecology aimed at growing a world based on care for both people and planet."

Unlike companies that specialize in posting bail for people, Bukit doesn't assess the risk of a person failing to show up for their court date. If a judge deems a person is eligible for bail, Bukit bails people out of jail as funds are available, on a first-come, first-served basis through a revolving fund that's replenished when people make their court dates.

"We're not in a position to make those evaluations," said Edwin Everhart, a volunteer with Bukit. "We're not interested in making those evaluations."

The business of bail

The purpose of cash bail is to secure someone's release from jail and to serve as the security someone puts forward to encourage their return to court. Just one state — Illinois — has eliminated cash bail, though some other states are curtailing its use.

Grassroots bail funds have emerged in recent years as an alternative to for-profit companies, which charge people a nonrefundable fee — a percentage of the bail — in return for assuring they appear in court at the appointed time.

Unlike companies, bail funds often operate through community donations, sometimes as nonprofit organizations, and sometimes, like Bukit, as a collective of like-minded residents. While the groups are decentralized, the National Bail Fund Network lists more than 50 such funds throughout the country.

University of Pittsburgh law professor David Harris said when people are detained pretrial, they can lose employment, a place to live, and even access to their children. Due to these concerns, people who cannot afford bail sometimes plead guilty to charges which they otherwise wouldn't "because that's the only way to get out right away."

"So they build up a criminal history sometimes for things they did not do, just because otherwise they're going to be held because they don't have the bail money," Harris said.

Across the country, funds like Bukit have been the subject of both praise and criticism. In Georgia, a federal judge blocked part of a law that would make it impractical for community-based bail funds to operate. A measure that could have made it difficult for bail funds to operate in Pennsylvania was proposed in 2021, but never made it to a vote.

Community-driven funds have been the target of criticism for bailing out people who may present a danger to the public. The Minnesota Freedom Fund, for example, came under fire in 2021 for bailing out a man arrested on a domestic violence charge, who then was charged in a fatal road rage shooting.

Of the 31 cases that Bukit Bail Fund supported from July to December 2024, 23 people made their court dates and eight did not, according to information provided by Bukit. The information they provided showed that most bail amounts ranged from \$100 to \$5,000.



The Allegheny County Jail on Tuesday, Feb. 25. Amaya Lobato Rivas / Next Generation Newsroom

Who decides who gets bailed out?

Sarah Linder Marx, senior deputy director of public outreach and staff development at the Allegheny County Public Defender's office, said cash bail is a "complicated and divisive topic," partially because the way it is used varies.

"It depends on the magisterial district justice who sets bail, so it can vary wildly," she said. "Cases that are violent may have a cash bail or not."

In Pennsylvania, judges can consider factors such as the defendant's employment status, criminal history, community ties, and estimated risk of not returning to court. In some cases, judges determine that a defendant is not eligible for bail.

Magisterial district judges are guided by the Rules of Criminal Procedure criteria, said Joseph J. Asturi, director of government affairs-media relations for the Fifth Judicial District of Pennsylvania.

Asturi said he was not aware of how many, if any, Allegheny County magistrates choose not to use cash bail. At least one, Xander Orenstein, has operated without setting cash bail.

Defendants or families can pay bail, but when those resources aren't available it often falls to companies that assess the risks before they write a check.

The American Bail Coalition is a trade association made up of bail insurance companies; the organization also includes bail agent members. Insurance companies underwrite the financial guarantees made by the bail bondsman, said Jeff Clayton, executive director.

"So if I'm your bail bondsman, you call me and I decide whether I want to post your bond or not," Clayton said. "The role of insurance companies is to decide whether to underwrite the amount that the bondsman is posting for you."

Within the industry, companies usually evaluate who the co-signer is as well as the defendant's background and criminal record before they decide to make a contract with them, Clayton said. The most important factor is whether there is a prior record of failure to appear in court, he said. Grassroots bail funds do not charge nonrefundable fees or do background checks on the people they bail out, unlike bondsmen and bail bonds companies.

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Monday, March 17, 2025

STATE

TN Senate adopts proposal to change state Constitution and restrict bail for some offenses

A proposal to amend the state constitution letting judges deny bail to more suspects found momentum in the Tennessee Senate and House last legislative session.



Author: Chris Salvemini

NASHVILLE, Tenn. — The Tennessee Senate adopted a proposal Monday that could give fewer people the right to bail as their cases go through the judicial process. If the resolution passes, it would begin the next step of amending the state constitution — putting the question on the ballot for voters.

The Senate adopted it Monday afternoon in a 23-6 vote. It still needs to pass the House and a popular vote before it can go into effect.

The resolution, SJR 0025, would take away the right of people accused of terrorism, second-degree murder, aggravated rape of a child, aggravated rape, grave torture or some other crimes

to access bail. It would let judges decide whether suspects should be given a chance at bail as their cases go through the judicial process, which could take years in some cases.

Judges would be required to record their reasoning for giving or denying a suspect bail. Currently, most suspects are given bail if they are arrested, except for some exceptionally violent crimes.

Representative Kip Capley (R-Summertown) said the proposal is meant to "keep violent criminals behind bars." In January 2024, some Democratic lawmakers from the Memphis area also appeared at a news conference to tout the legislation, according to The Associated Press.

Jeffrey Clayton, the Executive Director of the American Bail Coalition, spoke on the proposal last year and raised concerns about it.

"The history of this constitutional amendment lasts for 809 years," he said while testifying to lawmakers last year. "The language in the Tennessee Constitution is called 'The Ancient Rule.' It dates to 1215. That language was written at the Magna Carta ... Really, it's to protect the presumption of innocence."

Lawmakers introduced the proposal during the last legislative session. It cleared the House of Representatives and Senate, but it must pass again this year before voters may see it on the ballot.

Before amending the state constitution, proposals must also get more "yes" votes than "no" votes in the popular vote, and the number of "yes" votes must be a majority of the total votes in the previous gubernatorial election.

The House version of the proposal, HJR 0049, must still be discussed in the House Finance, Ways, and Means Subcommittee.

The Tennessee District Attorneys General Conference formally voiced its support of the proposal on March 14, passing its own resolution that said the proposal would "help enhance public safety by providing judges and magistrates with the discretion to deny bail to certain serious violent and sexual offenders."

The conference also said it believed the proposal would deter possible violent offenders, and "promote greater public confidence in the criminal justice system and the rule of law in this state." The resolution also cited five cases from across the state from 2014 to 2022 in which accused offenders were accused of committing separate violent crimes while out on bail.

Monday, March 17, 2025

Tennessee lawmakers push for constitutional amendment to restrict bail in violent crime cases

By: Kelsey Gibbs



State lawmakers have introduced a proposed constitutional amendment aimed at restricting bail for individuals accused of the most violent crimes.

NASHVILLE, Tenn. (WTVF) — Tennessee is grappling with a growing concern over individuals charged with serious crimes, including murder, who are out on bond and continuing to commit violent offenses.

In response, state lawmakers have introduced a proposed constitutional amendment aimed at restricting bail for individuals accused of the most violent crimes.

In Tennessee, nearly everyone charged with a crime has the constitutional right to bond. However, the recent wave of violent offenses prompted a renewed debate over whether that right should be adjusted for certain cases.

"I totally know that feeling, and I've seen it again and again," said Verna Wyatt, a prominent victim's advocate, who co-founded Tennessee Voices for Victims.

Wyatt, whose sister-in-law was raped and murdered by someone out on bond, is speaking out against the current system, calling for change.

"My best friend, who had been my sister-in-law for 17 years, was murdered by a man who was out on bond. It turns your life upside down," Wyatt said. "People are sick of hearing stories about innocent people being killed, raped, or severely injured by someone who's out on bond."

The proposed amendment ([SJR 0025](#)) would give judges the authority to deny bail for charges related to terrorism, rape, and other violent crimes. Currently, the Tennessee Constitution only allows this power in death penalty cases. If passed, the new measure would dramatically shift the way bail is handled in cases involving violent offenders.

"I can't tell you how happy I was when I heard about this," Wyatt said. "It's common sense, it's common sense."

Wyatt's advocacy work has placed her at the center of many heart-wrenching stories, including that of rapper Chris King, a California native murdered last year in Nashville.

Metro Police say the suspect in King's death was out on bond at the time, wearing an ankle monitor for a 2021 murder.

Wyatt says this case, among many others, underscores the frustration with a system that allows potentially dangerous offenders to remain free pending trial.

However, the proposal has sparked considerable opposition. During a debate in the state Senate, Senator Jeff Yarbrow expressed concerns about the broader implications of limiting bail. "There are some powers the government shouldn't have," Yarbrow said, voicing fears that the amendment could infringe on constitutional rights.

Yarbrow, along with six other senators, argued that restricting bail would undermine a fundamental right and burden taxpayers with the costs of housing more detainees.

"The constitution says that everybody has this right, and we're taking that right away," Yarbrow continued.

Critics of the proposed change also include the American Bail Coalition, which argued two years ago that there is no academic evidence to support the effectiveness of preventative detention in reducing crime.

"There's been no academic research that supports the use of preventative detention as a defective crime control policy," said Jeffery Clayton with the Coalition.

Despite this opposition, the measure passed the state Senate on Monday with 23 [votes](#) in favor. It will now move to the state House, where it will undergo further debate.

Tennessee District Attorneys General Conference adopted a resolution in full support of Senate Joint Resolution 25.

Supporters of the bill, like Wyatt, emphasize that the amendment would not eliminate bail for everyone but would focus on cases with a history of violent offenses.

"We don't need to revoke bonds for every single person," Wyatt said. "But for those serious cases, especially when the person has a history of committing violent crimes, it's time to take action."

The 113th General Assembly passed the first House and Senate Joint Resolutions in pursuance of the Constitutional Amendment.

The 114th General Assembly must now take the next step by passing Senate Joint Resolution 25 and House Joint Resolution 49 by a two-thirds vote of both houses.

The next step, according to [Tennessee's Constitution](#), is that the General Assembly must submit a proposed amendment or amendments to the people during the next general election in which a Governor is to be chosen.

If the people approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for Governor, voting in their favor, such amendment or amendments shall become a part of this Constitution.

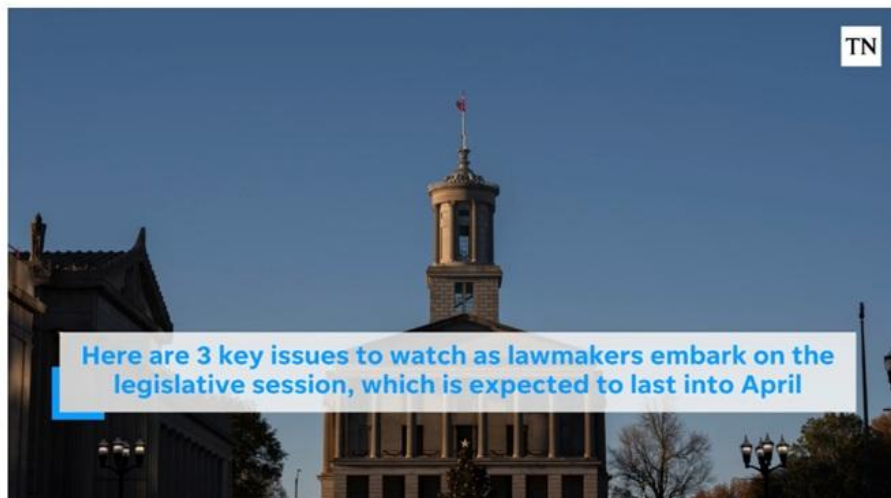
Tuesday, March 18, 2025

POLITICS

Tennessee Senate advances constitutional amendment to allow judges to deny bail



Melissa Brown
Nashville Tennessean



Tennessee legislature: 3 key issues to watch

The 114th Tennessee General Assembly convenes on Jan. 14 for a new two-year term.

Key Points

- Currently, Tennessee judges can only deny bail in first degree murder cases. This constitutional amendment would allow judges to deny bail in dozens of other crimes.
- Supporters, including legislative Republicans and local district attorneys, have argued the measure is needed to improve public safety.
- Opponents have warned of constitutional concerns with pre-trial detention for people who have not been found guilty of a crime, in addition to the financial burden it will have on local jails.
- To amend the state Constitution, proposed amendments must be approved by two separate General Assemblies: first by simple majority, and then again after an election year by two-thirds vote.
- The amendment on bail initially passed last year, meaning lawmakers must pass it again this year or in 2026 before it could appear on the November 2026 gubernatorial ballot.

A Republican effort to amend the Tennessee Constitution to allow judges to deny bail to some criminal defendants continues to advance through the General Assembly.

Senate Republicans on Monday gave final sign off to add the constitutional amendment to the 2026 gubernatorial ballot for a full public vote, though the measure still faces several hurdles in the House.

The constitutional amendment would give Tennessee judges the ability to deny pre-trial bail release to defendants charged with certain serious crimes like terrorism, second degree murder and rape. The amendment would apply to dozens of criminal offenses.

The bail reform effort has picked up both bipartisan support and opposition, though Republican leadership in both chambers are pushing hard to get the amendment through this session and on to a full state vote.

Opponents of the effort have argued there is a slippery constitutional slope in keeping a defendant in jail if they haven't yet been found guilty, and others have warned an increase in pre-trial detention could harm already overburdened local jail systems with skyrocketing costs.

"We should think long and hard before we push forward on curtailing the rights of the people we represent," Sen. Jeff Yarbrow, D-Nashville, said Monday.

Senate Majority Leader Jack Johnson, R-Franklin, said state courts are currently "hamstrung" by the state Constitution, which currently only allows pre-trial detention for capital offenses.



Sen. Jack Johnson walks to the podium to speak during a watch party for Gov. Bill Lee at the Cool Springs Hilton in Franklin, Tenn., Tuesday, Nov. 8, 2022. *Nicole Hester / The Tennessean*

With a U.S. Supreme Court precedent determining only murder can be considered a capital offense, Johnson said judges' hands are tied if they think defendants charged with a crime like rape would be danger to the community before they go to trial.

"Our No. 1 job up here is public safety," Johnson said. "It's public safety, and to equip our court systems with the tools they need to keep our communities safe."

Sen. London Lamar, D-Memphis, warned Tennesseans could likely see increases in local taxes to pay for the jail space needed. Unlike other bills, there is no clear financial analysis tied to the constitutional amendment. With more defendants held in jail awaiting trial, local communities could bear additional costs.

Sen. Todd Gardenhire, R-Chattanooga, warned his colleagues about the potential for ballooning costs on local governments.

"I've heard nothing from anybody about how we're going to pay for this when it hits the fan. Nothing. Crickets," Gardenhire said, calling hidden costs the "unintended consequence of a good idea." Gardenhire was the sole Republican to vote against the amendment.

Johnson said local authorities like sheriffs and district attorneys have supported the amendment despite potential costs.

"They believe the juice is worth the squeeze," Johnson said.

DA's group backs constitutional change

The Tennessee District Attorneys General Conference last week passed a resolution endorsing the constitutional measure.

"The Tennessee District Attorneys General Conference believes this change to the constitution will enhance public safety, reduce the revolving door of offenders charged with violent and sexual crimes, and will promote greater public confidence in the criminal justice system and the rule of law in this state," the conference said in a statement.

Legal experts have raised concerns about the amendment's vague language, as the amendment voters would see on a state ballot does not list every crime that could be eligible for pre-trial detention. Instead, it references "any other offense" under which a convicted person could not be released before serving at least 85% of a sentence.

Notably, the amendment as written would also allow the legislature to change which offenses qualify in the "any other offense" clause until Nov. 3, 2026. With early voting, this means Tennessee voters could cast a vote for or against the amendment before Nov. 3 and its very definition could be changed by the time polls close.

Jeff Clayton, executive director of the American Bail Coalition, said his organization lobbied House Speaker Cameron Sexton, R-Crossville, last year to eliminate the "85%" offenses or make the language more clear in the amendment. The push to change the wording ultimately did not advance in 2024 and the language was not changed when it was filed this year.

Clayton has been among the most outspoken opponents of the measure, arguing it contradicts an expected presumption of innocence and similar measures have led to skyrocketing costs in states like New Jersey.

"It's not going to fix the crime problem in Tennessee, period," Clayton said. "I don't think anyone has presented any evidence of that. I think throwing in 83 charges is what the Supreme Court would call a scattershot attempt at crime control versus a targeted approach, which is what we support."

House speaker makes push for amendment

The amendment has been a particular interest of Sexton, who has repeatedly pushed for the amendment and unusually sat in on a House Judiciary Committee this session to cast a vote. The speaker rarely openly participates in the committee process, but Sexton directed multiple questions to witnesses in favor of the amendment.

He has also openly admonished the bail industry, which has lobbied against the resolution, in addition to any lawmakers who might be considering opposing the effort.



Rep. Jeremy Faison, R- Cosby, Rep. William Lamberth, R- Portland, House Speaker Cameron Sexton, R- Crossville, during a press briefing after the fourth day of special session at the Tennessee State Capitol building in Nashville, Tenn., Thursday, Jan. 30, 2025. *Nicole Hester / The Tennessean*

"If this doesn't pass, the individuals who decide this isn't something they want to vote for are allowing a serial rapist to go free on bail," Sexton said. "You're taking away the ability of the judges to keep the public safe and not giving them the tools to look at that criminal and say it is better to incapacitate them than to have another victim."

Sexton has stressed the amendment wouldn't be a "mandate" on judges, but rather give judges the discretion to restrict pre-trial bail when they deem it prudent.

The amendment has had some bipartisan support. In committee, Rep. G.A. Hardaway, D-Memphis, said he felt the resolution properly balanced the rights of defendants and public safety.

Meanwhile, two Senate Republicans on Monday announced they had changed their mind on the measure. Sen. Rusty Crowe, R-Johnson City, said he felt voters deserved a vote on the issue despite his personal issues with the amendment.

To amend the state Constitution, proposed amendments must be approved by two separate General Assemblies: first by simple majority, and then again after an election year by two-thirds vote. The Senate approved the measure Monday in a 23-6 vote, enough to secure the two-thirds threshold.

The [amendment on bail initially passed last year](#), meaning lawmakers must pass it again this year or in 2026 before it could appear on the November 2026 gubernatorial ballot.

Thursday, March 20, 2025

Knoxville News Sentinel

Senate advances constitutional amendment

Would allow judges to deny bail in some cases

Law • U.S. News • Politics • US Elections • US Politics
20 Mar 2025 Melissa Brown

A Republican effort to amend the Tennessee Constitution to allow judges to deny bail to some criminal defendants continues to advance through the General Assembly.

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Saturday, May 3, 2025

Colorado bounty hunters allegedly committing crimes on the job highlights lack of regulation

William Holland, 43, who has prior convictions, is facing assault charges after woman he was paid to apprehend suffered broken bones, dislocated elbow



A Colorado bounty hunter facing criminal charges after an alleged assault highlights a lack of regulation in the fugitive recovery industry in the state. William Holland, 43, who has prior convictions, is facing assault charges after woman he was paid to apprehend suffered broken bones, dislocated elbow

By: Natalie Chuck, Joe Vaccarelli

DENVER — Asialene Montoya was technically on the run after missing a sentencing hearing that would have put her in prison.

But on a December night last year, she was begging for the police to come and take her. She would later find herself in jail, but only after a weeks-long stint in the infirmary.

Montoya was contacted by bounty hunter William Holland, 43, who was paid to find her by a bail bondsman for absconding on bond, according to investigators. However, what investigators

believe happened after Holland and another woman found Montoya would lead to Holland facing criminal charges – something that has happened to him before.

“I would rather go with the cops no matter what was happening,” Montoya told Denver7 Investigates from the Arapahoe County Jail. “I was like, ‘Call 911,’ because I was scared of them.”

Holland has a criminal history and has faced charges in the past. In this case, he’s charged with second-degree assault, causing serious bodily injury.

He’s one of multiple bounty hunters Denver7 Investigates has looked into who have been charged with crimes they committed while bounty hunting. However, a lack of regulation in the industry in Colorado means nothing prevents bondsmen from hiring them.

“We call Colorado one of a handful of ‘Wild West states,’” said Jeff Clayton, executive director of The American Bail Coalition, a bail advocacy group. “Bail agents can just go out and hire whoever they want with no state oversight or oversight whatsoever.”

In Montoya’s case, documents reveal Holland found her just after 1 a.m. at a Denver apartment complex. The encounter was captured on video by a neighbor. In it, Montoya can be seen on the ground, shackled and screaming for help.

Also in the 20-minute video is Montoya sitting in a truck while the person who investigators believe is Holland – wearing a black jacket that says “bail bonds” on the back – kicking the door and yells at her to get out.

Later, he appears to use a stun gun on her multiple times.

“I thought I was getting kidnapped. I didn’t know. I couldn’t imagine why,” Montoya said. During the incident, Montoya suffered broken bones and a dislocated elbow. She needed surgery to repair some of the damage.

“I think there was so much adrenaline going on, I don’t know where the pain was coming from. I kind of felt my arm dislocate,” she said.

Denver police were called during the incident, and Holland’s affidavit states that officers arrived after a report of an attempted kidnapping. It states that officers left after telling Holland to release Montoya. He ignored that order, according to investigators.

Holland was arrested roughly a month after the night he picked up Montoya. He’s currently out on bond while the case moves forward. His next hearing is slated for May 20.

Criminal history

Court records show a history of activity involving the 43-year-old bounty hunter. On the night when police say he picked up Montoya, he was awaiting trial in Arapahoe County, where he faced multiple counts of kidnapping from a 2021 incident that involved a victim he was bounty hunting.

He was acquitted of those charges

in March but has several other convictions on his record, including felony theft in Maryland and impersonating a peace officer in Arapahoe County.

Denver7 Investigates previously highlighted a different bounty hunter, Jesse Wagner, who was facing roughly a dozen counts related to a Jefferson County case in 2023, including kidnapping and unlawful sexual contact.

Earlier this year, he accepted a plea deal, pleading guilty to two charges – illegal use of a stun gun and possession of a weapon by a previous offender. He was sentenced to five years in prison.

However, Wagner has a lengthy criminal history in California and was facing charges in the San Diego area at the time of his plea deal. He also had several previous convictions in the state, including for crimes committed while bounty hunting.

The victim in Wagner's Jefferson County case spoke to Denver7 Investigates anonymously and said she thought jail would be safer than being around Wagner.

Lack of regulation

Due to Colorado's lack of industry regulation, bondsmen can easily hire people like Holland and Wagner.

"Just to say that we have people that have power conferred by the state of Colorado to arrest people with no licensure and training, to me, should be alarming to every citizen of the state of Colorado," Clayton said.

Katie O'Donnell, a spokesperson with the Colorado Department of Regulatory Agencies (DORA), said the state did have regulations at one point, but not in the past several years. DORA oversees the state's Division of Insurance, which oversees bail bonding.

In 2011, Colorado's Office of Policy, Research and Regulatory Reform (COPRRR), gave a review to the state's general assembly recommending "repealing the requirement that prior to compensating a bail recovery agent, a bail agent must reconfirm that the recovery agent is qualified."

Those qualifications included passing a fingerprinted background check and taking certified training.

That recommendation stuck, and the law changed in 2012.

"There's not an enforcement component if there's not a statutory oversight," O'Donnell said. The state took another look at things in 2014 but did not make any changes.

O'Donnell said it would take a legislative change to get any regulation on the books for bounty hunters.

It's something Clayton believes is overdue for the state of Colorado.

"I think it's time for the department to take another look at this. And I think it's time for the legislature to take another look at this," he said.

Montoya is currently serving her sentence for her identity theft conviction but is still carrying the trauma from that night.

"I get very emotional. It was scary. I'm still going through the process of healing from everything that they did," she said. "It was a horrible experience, and I want to make sure that it doesn't happen to anybody ever again."

Denver7 Investigates made multiple attempts to contact Holland, including reaching out to the attorney listed on recent court records for this case. That attorney would not confirm or deny his involvement in this case.



Monday, July 21, 2025

NATIONAL

Community bail funds face backlash from GOP lawmakers after a 2020 surge in popularity

Meg Anderson



As efforts to reform the cash bail system increase, the backlash against them does too. On Monday, President Trump disparaged bail reform on social media, calling it a "complete disaster."

Brian Cassella/Chicago Tribune via Getty Images

Three years ago, Jessica was struggling with drug addiction and homelessness.

"I was stranded in Atlanta, and I got into some trouble," she says. NPR is not using her last name because she is worried about the stigma of having a criminal record.

She was charged with possession of marijuana, identity fraud and forgery. Her bail was set at more than \$6,000, and she couldn't pay. She ended up in jail for two months, away from her two young daughters.

"I didn't have any family to bond me out. At that point in my life, I had already kind of burned a lot of bridges," she says. "You feel like nobody out there cares about you. It's something I never want to experience again."

At that point, Jessica had three paths ahead of her. The first: Stay in jail. That outcome is common: [Most people](#) in pre-trial detention in the U.S. are there because they can't afford bail.

The second: Use a commercial bail bond company, which will pay bail in exchange for a nonrefundable fee, often 10 percent of the full bail amount.

The third: Receive help from a community bail fund. These groups use donations to pay bail, for free, for people who can't.

That last avenue is how Jessica got out, and began to turn her life around. She moved into a sober living house and reconnected with her daughters. Now, she works at a mental health and substance abuse treatment program.

Bail reform rollbacks

Community bail funds are part of a larger movement to reform the practice of cash bail across the country. According to a [2024 report](#) by the nonpartisan Brennan Center for Justice, at least eight states have passed legislation since 2020 aimed at reforming bail — things like requiring judges to impose the least restrictive conditions and eliminating cash bail either entirely or for low-level offenses.

But as efforts to reform bail increase, so does the backlash against them. New York, for instance, [rolled back much of its bail reform efforts](#) just a few years after it passed them. And on Monday, President Trump [weighed in on social media](#), calling bail reform a "complete disaster" and asserting that crime in U.S. cities "started to significantly rise" when reforms passed.

Violent crime did rise in 2020 and 2021, but it has [fallen over the last three years](#). Regarding Trump's assertions, the White House pointed NPR to a [2022 analysis](#) done by the district attorney's office in Yolo County, Calif., which found that most of the 595 people released there without bail during the study period committed new crimes. However, another 2024 study by the Brennan Center for Justice looked at 33 cities across the country, and found [bail reform did not increase crime rates](#).

Community bail funds have also faced increased criticism in recent years – in part because they're [more common](#) than they used to be.

"Following the 2020 protests, there was a lot of momentum around charitable bail payments to support people who were protesting police brutality," says Erin George, national director of policy for The Bail Project, a nonprofit that has helped release more than 30,000 people from jails nationwide, including Jessica.

In 2015, there were only about a dozen community bail funds in the U.S., according to the National Bail Fund Network. After 2020, there were more than 100.

That surge has led to a backlash from lawmakers — nearly all Republicans — to demand those funds be more closely watched, [often citing public safety concerns](#).

But proponents of the community funds say the calls for more regulation are a political attack on a lifeline community members can offer one another – and on an alternative to cash bail that, advocates say, prove it doesn't need to exist.

They say the funds help people who can't otherwise afford it return home as their case plays out in court, without a financial burden.

Adding restrictions to community bail funds

Since 2020, more than a dozen state legislatures and Congress have introduced bills to restrict or regulate community bail funds.

At least four states — including Texas, Indiana, Georgia and Kentucky — have adopted laws restricting the use of bail funds, like [adding more reporting requirements](#), saying the [funds cannot be used](#) for people charged with a violent crime, and [limiting how many people](#) a group can bail out in a given year, though that law is [being challenged](#) in court.

Although many of these laws passed during the Biden administration, Pilar Weiss, who runs the National Bail Fund Network, says it's troubling that this backlash is in full swing at a time when many people are protesting the second Trump administration.

"Community bail funds work as an expression of human solidarity to free people every day, as well as during moments of mass protest," says Weiss who added that the laws introduced and passed in various states to restrict community bail funds feel to her like part of a "very intentional attack on solidarity across communities."

The impact of community bail funds is small, she says. They can't come close to bailing out everyone around the country who can't afford to pay for their own release. Many are volunteer-run, and increased regulation mandated by states could make it hard for some to function, says Mike Dunn of the Emergency Release Fund, a charitable bail organization in New York.

"There's these kinds of hurdles you have to jump through now to be able to be a charitable bail organization. You know, they don't make it easy," he says.

If fewer bail funds existed, Dunn says, more people would stay in jail, often in poor conditions, away from work, school and family.

Jeff Clayton, executive director of the American Bail Coalition, which represents commercial bail bond companies, says much of the opposition is about safety.

During the 2024 presidential election, for instance, [conservatives criticized Kamala Harris](#) for tweeting support in 2020 for the Minnesota Freedom Fund. Two people the fund bailed out were later convicted of murder. At the time, a spokesperson for the fund, Noble Frank, said the nonprofit had paid bail for nearly 3,000 people and few had committed violent crimes.

Still, Clayton says, given the amount of money flowing through the funds, he believes they should be more heavily regulated.

"You do it charitable, you do it for profit, you still need to have a bail license in order to do that, and regulatory oversight where they can prohibit you from acting as a bondsman if there's abuses or for some reason you're stealing funds," he says.

He pointed to one criminal case in New York, where the head of a mutual aid group was indicted for [allegedly using bail money](#) for personal expenses.

"If you're going to operate in the criminal justice system, I don't really think it's that onerous," Clayton says, of more regulations.

But Erin George, of the Bail Project, says a key impact bail funds have had is showing that it's safe and effective to release people from pre-trial detention: According to the organization, the people they've helped release show up for [more than 90 percent](#) of their court dates.

"It makes a data-driven, evidence-based case that we should really be looking at our cash bail systems and laws," George says. "And that cuts at the financial bottom line of commercial bail bond companies."

Some bail funds are now thinking more broadly about the system as a whole. For instance, the Minnesota Freedom Fund, which received an influx of tens of millions of dollars during the 2020 protests against police brutality, [announced in May](#) that it is pivoting away from paying bail to instead advocate for an end to cash bail altogether.

Friday, July 25, 2025

POLITICS

FACT FOCUS: Trump claims cashless bail increases crime, but data is inconclusive



President Donald Trump speaks during a reception for Republican members of Congress in the East Room of the White House, Tuesday, July 22, 2025, in Washington. (AP Photo/Julia Demaree Nikhinson)

BY MELISSA GOLDIN

As his administration [faces mounting pressure](#) to release Justice Department files related the [Jeffrey Epstein](#) sex trafficking case, President Donald Trump is highlighting a different criminal justice issue — cashless bail.

He suggested in a [Truth Social post](#) this week that eliminating cash bail as a condition of pretrial release from jail has led to rising crime in U.S. cities that have enacted these reforms. However, studies have shown no clear link.

Here's a closer look at the facts.

TRUMP: "Crime in American Cities started to significantly rise when they went to CASHLESS BAIL. The WORST criminals are flooding our streets and endangering even our great law enforcement officers. It is a complete disaster, and must be ended, IMMEDIATELY!"

THE FACTS: Data has not determined the impact of cashless bail on crime rates. But experts say it is incorrect to claim that there is an adverse connection.

"I don't know of any valid studies corroborating the President's claim and would love to know what the Administration offers in support," said Kellen Funk, a professor at Columbia Law School who studies pretrial procedure and bail bonding. "In my professional judgment I'd call the claim demonstrably false and inflammatory."

Jeff Clayton, executive director of the American Bail Coalition, the main lobbying arm of the cash bail industry, also pointed to a lack of evidence.

"Studies are inconclusive in terms of whether bail reforms have had an impact on overall crime numbers," he said. "This is due to pretrial crime being a small subset of overall crime. It is also difficult to categorize reforms as being 'cashless' or not, i.e., policies where preventative detention is introduced as an alternative to being held on bail."

Different jurisdictions, different laws

In 2023, Illinois became [the first state](#) to completely eliminate cash bail when the state Supreme Court upheld the constitutionality of the law abolishing it. The move was part of an expansive criminal justice overhaul adopted in 2021 known as the [SAFE-T Act](#). Under the change, a judge decides whether to release the defendant prior to their trial, weighing factors such as their criminal charges, if they could pose any danger to others and if they are considered a flight risk.

Loyola University of Chicago's Center for Criminal Justice [published a 2024 report](#) on Illinois' new cashless bail policy, one year after it went into effect. It acknowledges that there is not yet enough data to know what impact the law has had on crime, but that crime in Illinois did not increase after its implementation. Violent and property crime declined in some counties.

A number of [other jurisdictions](#), including New Jersey, New Mexico and Washington, D.C., have nearly eliminated cash bail or limited its use. Many include exceptions for high-level crimes.

Proponents of eliminating cash bail describe it as a [penalty on poverty](#), suggesting that the wealthy can pay their way out of jail to await trial while those with fewer financial resources have to sit it out behind bars. Critics [have argued](#) that bail is a time-honored way to ensure defendants released from jail show up for court proceedings. They warn that violent criminals will be released pending trial, giving them license to commit other crimes.

A lack of consensus

Studies have shown mixed results regarding the impact of cashless bail on crime. Many focus on the recidivism of individual defendants rather than overall crime rates.

A [2024 report](#) published by the Brennan Center for Justice saw "no statistically significant relationship" between bail reform and crime rates. It looked at crime rate data from 2015 through 2021 for 33 cities across the U.S., 22 of which had instituted some type of bail reform. Researchers used a statistical method to determine if crime rates had diverged in those with reforms and those without.

Ames Grawert, the report's co-author and senior counsel in the Brennan Center's Justice Program, said this conclusion "holds true for trends in crime overall or specifically violent crime."

Similarly, a [2023 paper](#) published in the American Economic Journal found no evidence that cash bail helps ensure defendants will show up in court or prevents crime among those who are released while awaiting trial. The paper evaluated the impact of a 2018 policy instituted by the Philadelphia's district attorney that instructed prosecutors not to set bail for certain offenses.

A 2019 court decree in Harris County, Texas, requires most people charged with a misdemeanor to be [released without bail](#) while awaiting trial. The [latest report](#) from the monitoring team responsible for tracking the impact of this decision, released in 2024, notes that the number of people arrested for misdemeanors [has declined](#) by more than 15% since 2015. The number of those rearrested within one year has similarly declined, with rearrest rates remaining stable in recent years.

Asked what data Trump was using to support his claim, the White House pointed to a [2022 report](#) from the district attorney's office in Yolo County, California, that looked at how a temporary cashless bail system implemented across the state to prevent COVID-19 outbreaks in courts and jails impacted recidivism. It found that out of 595 individuals released between April 2020 and May 2021 under this system, 70.6% were arrested again after they were released. A little more than half were rearrested more than once.

A more recent paper, [published in February](#) by the IZA Institute of Labor Economics, also explored the effects of California's decision to suspend most bail during the COVID-19 pandemic. It reports that implementation of this policy "caused notable increases in both the likelihood and number of rearrests within 30 days." However, a return to cash bail did not impact the number of rearrests for any type of offense. The paper acknowledges that other factors, such as societal disruption from the pandemic, could have contributed to the initial increase.

Many contributing factors

It is difficult to pinpoint specific explanations for why crime rises and falls.

The American Bail Coalition's Clayton noted that other policies that have had a negative impact on crime, implemented concurrently with bail reforms, make it "difficult to isolate or elevate one or more causes over the others."

Paul Heaton, a law professor at the University of Pennsylvania who studies criminal justice interventions, had a similar outlook.

"Certainly there are some policy levers that people look at — the size of the police force and certain policies around sentencing," he said. "But there's a lot of variation in crime that I think even criminologists don't necessarily fully understand."

POLITIFACT

Monday, August 11, 2025

Trump exaggerates Washington, DC, crime while ordering police takeover and National Guard deployment



President Donald Trump speaks with reporters at the White House, Monday, Aug. 11, 2025, along with Secretary of the Interior Doug Burgum, Secretary of Defense Pete Hegseth, Attorney General Pam Bondi and FBI Director Kash Patel, look on. (AP)

President Donald Trump said he is deploying 800 National Guard troops to Washington, D.C., and taking control of the Metropolitan Police Department.

The nation's capital is "becoming a situation of complete and total lawlessness," Trump said at an [Aug. 11 press conference](#). "Washington, D.C., should be one of the safest, cleanest and most beautiful cities anywhere in the world, and we're going to make it that."

Many of the details Trump cited do not stand up to scrutiny.

Trump's actions are a step toward making good on his threat of a [federal takeover](#) of the district after [carjackers severely beat](#) a former Department of Government Efficiency employee.

[News](#) reports said the Trump administration is dispatching 120 FBI agents for overnight shifts. The FBI confirmed to PolitiFact that its district field office is participating but provided no further details.

In a [news briefing](#) after Trump's announcement, Washington, D.C., Mayor Muriel Bowser said the district would cooperate with the federal government and added that she speaks with Trump often about the city's progress on crime. "In fact, my first meeting with him after he was elected the second time, we went over the crime trends; we went over how we are seeing decreases, so the president is read in on our efforts," she said.

Can Trump invoke a federal takeover of Washington, D.C., under Section 740 of DC Home Rule Act?

[Trump](#) cannot take over the city [without congressional approval](#). He is using an emergency provision to temporarily oversee the district's police force.

The U.S. [Constitution](#) created the District of Columbia as a seat of the federal government. In 1973, President Richard Nixon signed the [Home Rule Act](#), enabling district residents to elect a mayor and city council. The law gives the district autonomy for local governance, but the city still answers to Congress on matters including budgetary oversight and the ability to overturn local legislation.

[Section 740](#) of the Home Rule Act allows the president to temporarily take control of the city's police department during an emergency.

In an [Aug. 11 executive order](#), Trump invoked Section 740, citing crime in the district as an emergency. The executive order says federal use of the district's Metropolitan Police Department is needed to maintain law and order; protect federal buildings and monuments; and ensure "conditions necessary for the orderly functioning of the Federal Government."

Trump delegated operational control of the department to U.S. Attorney General Pam Bondi.

The emergency powers cannot extend past 48 hours, [the law says](#), unless the president notifies Congress in writing about the reason and the time period needed. If he notifies Congress, Trump can extend the emergency for up to 30 days.

Did Washington, D.C., homicides reach the highest rate ever in 2023?

Trump said, "Murders in 2023 reached the highest rate, probably ever. They say 25 years, but they don't know what that means, because it just goes back 25 years. Can't be worse."

Metropolitan Police Department [data](#) showed 274 homicides in 2023, the highest number over the past 20 years. Trump omitted that the department's [preliminary crime data](#) shows homicides have declined 32% since 2023, to 187 in 2024.

The homicide rate continues to decline. This year through Aug. 11, homicide decreased by 12% compared with the same time period in 2024.

Jeff Asher, an analyst for AH DataLytics, told PolitiFact the homicide rate increased substantially after 2020, peaking in 2023 at 39 per 100,000 people.

That was the highest rate since 2003, but far below the 1991 peak of 81 per 100,000 people. The falling rate matches national trends, Asher said.

White House spokesperson Steven Cheung [said on X](#) that the city police statistics are not as they seem. Cheung attached a July [WRC-TV](#) story about a district police commander's May suspension after he was accused of altering crime statistics.

Fraternal Order of Police Chairman Gregg Pemberton told the TV station that union members and management said the command staff want to "make sure that these classifications of these reports are adjusted over time to make sure that the overall crime stats stay down."

A police spokesperson told PolitiFact that Commander Michael Pulliam is on administrative leave and the department can't comment on active internal investigations. The union did not respond to our request for comment.

Have violent crimes such as carjacking increased in Washington, D.C.?

Trump said, "The number of car thefts has doubled over the past five years, and the number of carjackings has more than tripled."

Trump is correct that the number of these crimes increased, but he did not mention a recent decline in carjackings.

The [city's dashboard](#) shows carjackings rose from 2020 through 2023 before declining in 2024. This year, through Aug. 9, there have been 188 carjackings compared with 299 during the same time period in 2024, and compared with 607 in 2023, a police spokesperson told PolitiFact.

The [city's preliminary car theft data](#) shows a 25% drop from 2023 to 2024, and car thefts are essentially flat year to date in 2025 compared with the same period last year.

"Auto theft increased a huge amount in DC after 2020 before surging again in 2023 following the video being posted showing how to steal certain models of Kia and Hyundai cars," Asher said. The "Kia Boyz" phenomenon [happened nationwide](#).

Overall, the city's data shows that through Aug. 11 this year, compared with 2024, violent crime in the district declined by 26%. The Washington, D.C., violent crime decrease is part of a [nationwide trend](#) in major cities.



Metropolitan Police Department Sgt. Anthony Walsh sets out steering wheel locks during an event where police officers distributed Apple AirTags and similar tracking devices to drivers in an attempt to curb a rise in crime in Washington on Nov. 7, 2023. (AP)

Does implementing cashless bail affect crime rates?

Trump said, "The radical left City Council adopted no cash bail. By the way, every place in the country where you have no cash bail is a disaster." ...Somebody murders somebody, and they're out on no cash bail before the day is out."

"No cash bail" or "cashless bail" allows certain defendants awaiting trial to be released from custody without paying bail. Even with cashless bail laws in place, defendants accused of violent crimes such as murder, can still be detained if judges determine they are a public safety threat or flight risk.

Misdemeanor charges typically result in higher rates of release, according to the district's [Pretrial Services Agency](#).

In 2024, 89% of defendants were not rearrested during the pre-trial period, the agency [said](#).

[Proponents](#) of eliminating cash bail say it harms low-income people. [Those who support](#) cash bail say it ensures defendants appear in court and removing it threatens public safety.

Washington, D.C., was a pioneer in pretrial reform, largely eliminating cash bail in [the 1990s](#). There's a lack of expert consensus on the impact of cashless bail on crime rates.

A [2024 report](#) by the left-leaning Brennan Center for Justice at NYU Law said researchers found "no statistically significant relationship" between bail reform and crime rates. The study looked at crime rate data from 2015 through 2021 for 33 cities across the U.S., 22 of which had implemented some type of bail reform.

The Prison Policy Initiative, a nonprofit that supports reducing the prison population, measured public safety before and after pretrial reforms in four states and nine cities and counties, including Washington, D.C. In general, researchers found that releasing people pretrial did not put communities at risk for more crime.

The [Trump administration has cited](#) a [2022 report](#) from the Yolo County, California, district attorney's office as evidence that cashless bails cause increased crime. The report explored the effects of California's temporary bail suspension during the COVID-19 pandemic, finding that 420 out of 595 people — 70.6% — were rearrested after being released from jail under this system.

A November 2024 paper by the [Public Policy Institute of California](#) also found that implementing emergency bail orders caused "notable increases in both the likelihood and number of rearrests within 30 days." However, once reversed, the return to cash bail did not affect the number of rearrests.

POLITICS

FACT FOCUS: TRUMP EXAGGERATES, MISSTATES FACTS ON WASHINGTON CRIME

BY DAVID KLEPPER

Updated 5:17 PM PDT, August 11, 2025



President Donald Trump says he's placing Washington, D.C., police under federal control and is deploying the National Guard. The Democratic mayor of D.C., Muriel Bowser, has noted that violent crime in Washington has decreased since a rise in 2023.

WASHINGTON (AP) — President Donald Trump said Monday that his administration [will take over policing the nation's capital city](#) in what the Republican said is an effort to bring down rising crime rates in Washington, D.C.

But Trump exaggerated or misstated many of the facts surrounding public safety in Washington, where the crime rate has fallen in recent years, while leaving out much of the context.

Here's a closer look at the facts:

Statistics rebut Trump's claims about violent crime in Washington

TRUMP: "It's getting worse, not getting better. It's getting worse."

THE FACTS: Statistics published by Washington's Metropolitan Police contradict the president and show violent crime has dropped in Washington since a post-pandemic peak in 2023.

[According to the data](#), homicides, robberies and burglaries are down this year when compared with this time in 2024. Overall, violent crime is down 26% compared with this time a year ago.

A recent Department of Justice [report](#) shows that violent crime is down 35% since 2023, returning to the previous trend of decreasing crime that puts the district's violent crime rate at its lowest in 30 years.

That report shows that when compared to 2023 numbers, homicides are down 32%, armed carjackings are down 53% and assaults with a dangerous weapon are down 27%.

The city's statistics have come into question, however, after authorities opened an investigation into allegations that officials altered some of the data to make it look better. But Mayor [Muriel Bowser](#) stands by the data and said Trump's portrait of lawlessness is inaccurate.

"We are not experiencing a spike in crime," Bowser said on MSNBC Sunday. "In fact, we're watching our crime numbers go down."

Murders in 2023 in Washington were high, but not the highest ever

TRUMP: "Murders in 2023 reached the highest rate, probably ever. They say 25 years, but they don't know what that means because it just goes back 25 years."

THE FACTS: In 2023, the District of Columbia recorded 274 murders in a city of about 700,000, its highest number in 20 years. But the city's own crime statistics from the 1970s, 80s and 90s, when [the population was smaller](#), show much higher numbers of homicides.

In 1990, for instance, the city reported 498 homicides. The next year saw 509, and 460 in 1992.

Decades of statistics on crime in the city are [available online](#).

Washington murder rate compared to international capitals

TRUMP: "The murder rate in Washington today is higher than that of Bogota, Colombia, Mexico City. Some of the places that you hear about as being the worst places on Earth, much higher. This is much higher."

THE FACTS: It's true, but Trump isn't telling the whole story. Washington does have a higher homicide rate than many other global cities, including some that have historically been considered unsafe by many Americans. But Trump is leaving out important context: the U.S. [in general](#) sees [higher violent crime rates than many other countries](#).

While Washington is [one of America's most dangerous big cities](#), others have [higher crime rates](#).

Trump blames cashless bail for crime without evidence

TRUMP : “This dire public safety crisis stems from a public safety crisis that is directly from the abject failures of the city’s local leadership. The radical left City Council adopted no cash bail. By the way, every place in the country where you have no cash bail is a disaster.”

THE FACTS: Data has not determined the impact of [cashless bail on crime rates](#). Studies, many of which focus on recidivism of defendants rather than crime rates, have shown mixed results.

A [2024 report](#) published by the Brennan Center for Justice saw “no statistically significant relationship” between bail reform and crime rates. The nonprofit looked at crime rate data from 2015 through 2021 for 33 cities across the U.S., 22 of which had instituted some type of bail reform. Researchers used a statistical method to determine if crime rates had diverged in those with reforms and those without.

Ames Grawert, the report’s co-author and senior counsel in the Brennan Center’s Justice Program, said this conclusion “holds true for trends in crime overall or specifically violent crime.”

Similarly, a [2023 paper](#) published in the American Economic Journal found no evidence that cash bail helps ensure defendants will show up in court or prevents crime among those who are released while awaiting trial.

“I don’t know of any valid studies corroborating the President’s claim and would love to know what the Administration offers in support,” Kellen Funk, a professor at Columbia Law School who studies pretrial procedure and bail bonding, told The Associated Press in a July 25 [fact check](#). “In my professional judgment I’d call the claim demonstrably false and inflammatory.”

The Trump administration has cited a [2022 report](#) from the district attorney’s office in Yolo County, California, that looked at how a temporary cashless bail system implemented across the state to prevent COVID-19 outbreaks in courts and jails impacted recidivism. It found that out of 595 individuals released between April 2020 and May 2021 under this system, 70.6% were arrested again after they were released.

Funk, contacted Monday, noted that Washington D.C. reformed its cash bail system in the 1990s.

“What the President is declaring to be an ‘emergency’ is a system that has functioned much better than cash-based bail systems for nearly thirty years now, including during the [recent historic lows](#) in reported crime in the District,” he said, adding that “the D.C. bail system has served as a model for bipartisan bail reform efforts in New Jersey and New Mexico over the past decade.”

Associated Press writer Melissa Goldin in New York contributed reporting.



Expert breaks down impact of cashless bail on DC crime rates as Trump targets system

Carl Willis

Tue, August 26th 2025 at 10:59 PM

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The E. Barrett Prettyman federal courthouse in Washington, D.C., in August of 2025 (7News)

WASHINGTON (7News) — The more than 30-year-old cashless bail system that allows some who are arrested for nonviolent offenses to be released from jail without paying bail has caught the attention of President Trump.

Citing public safety and concerns over repeat offenders, Trump signed [an executive order](#) that threatens to pull federal resources from jurisdictions that have cashless bail policies.

"All over the country, cashless bail, we are ending it, but we're starting by ending it in DC, and we have the right to do that through federalization," said Trump.

Jeffrey Clayton, the Executive Director of the American Bail Coalition, said the cashless bail system has negatively impacted public safety.

"I think in certain instances it has, and certainly we've seen that in New York, but it's niche, it's small, and it's related to people who have prior violent felony convictions or were recently arrested," said Clayton. "That's people that we're talking about, those who are on a crime spree, and when we give them a free bail, the results are clear. That increases pre-trial crime."

However, Clayton said overall, crime trends are not impacted by pretrial crime.

According to statistics from the Council for Court Excellence, in 2023, a year D.C. saw a sharp spike in crime, nearly 14,000 people were on supervised release. Around 8% or about 1,100 were re-arrested.

Of those, eight people who were originally charged with a violent crime were re-arrested for another violent crime.

"The big impact is not just crime, it's just that people aren't showing up for court, and thus they're not getting convicted, and thus we're not deterring people from doing it again," said Clayton. "That's where we're seeing the breakdowns. I think that's really what's happening in DC. We're not getting to it fast enough. We're not getting to the fork in the road of innocence and guilt fast enough."

There is also the issue of economic disparity.

"Pre-trial detention should depend on whether someone is a flight risk or a threat to the public — not whether they can afford bail," DC Attorney General Brian Schwab wrote in a social media post. "Cash bail creates a two-tiered justice system where poor people stay locked up simply because they cannot afford bail."

D.C. Mayor Muriel Bowser also commented on the executive order.

"What does work, and I hope that this is under consideration, is to require judges to hold certain accused pre-trial, and that's why we've seen the reduction in shooting and use of guns in this city," she said.

Clayton said a balance needs to be struck with a hybrid system.

"When innocent people are in jail, and they sit there for too long and they're only exonerated, that's a waste of taxpayer resources," said Clayton. "The time to disposition in the District of Columbia has doubled. It's got to be reduced, and is sort of the fairest way to solve this problem."

Tuesday, September 23, 2025

Cashless bail, explained: What it is, how it works and why Trump is targeting it

Some research suggests that setting money bail does not make communities safer.

BY: AMANDA HERNÁNDEZ



White House Press Secretary Karoline Leavitt addresses the killing of Ukrainian refugee Iryna Zarutska in Charlotte, N.C., during a news briefing. Republican state lawmakers in North Carolina are considering legislation that would tighten pretrial release rules and require people to post money bail for certain offenses. (Photo by Win McNamee/Getty Images)

When President Donald Trump signed an executive order last month threatening to withhold federal funding from states and localities that have adopted “cashless bail” policies, he escalated a national fight over how courts decide who should remain behind bars before trial.

The move has already rippled into state capitols. In North Carolina, Republican lawmakers are considering legislation this week that would tighten pretrial release rules after a high-profile fatal [stabbing](#) on a commuter train last month.

The bill, which was first [introduced](#) in March and altered earlier this week with the title “Iryna’s Law,” would require people to post money bail for certain offenses and would restrict judicial discretion for violent and repeat offenders. The bill also would add a new category of violent offenses that require specific pretrial conditions, such as electronic monitoring. It passed the state Senate on Monday.

“When we were looking at drafting this bill, a lot of it was looking at the situation that happened in Charlotte,” said North Carolina state Sen. Danny Britt, a Republican and criminal defense attorney, to [WRAL-TV](#).

In New York, Republican lawmakers are pushing to advance [legislation](#) that would further limit pretrial release and allow judges to weigh a defendant’s “dangerousness” in setting conditions. New York ended bail for most misdemeanors and nonviolent felonies in 2019, but has since scaled back the law at least three times to allow judges more discretion.

And in Texas — where legislators [passed](#) new bail restrictions earlier this summer — voters in November will consider a [constitutional amendment](#) banning bail altogether in certain cases for violent offenses such as murder, aggravated assault and indecency with a child.

Trump signed the cashless bail order three days after Iryna Zarutska, a 23-year-old Ukrainian refugee, was killed in a seemingly random stabbing in Charlotte, North Carolina. The suspect,

who has a lengthy criminal record, had been released without bond last winter after being charged with misusing the 911 system.

Trump's [order directs](#) U.S. Attorney General Pam Bondi to identify which jurisdictions have "substantially eliminated cash bail," though it does not define what that means — leaving its scope and enforcement unclear. Some legal experts say they expect challenges in court, as has happened with previous efforts to tie federal funding to state or local policies.

Trump issued the directive alongside another order aimed at Washington, D.C., where he declared a "crime emergency" and sought to roll back the city's decades-old bail law. The district did not fully eliminate cash bail when it passed its Bail Reform Act in 1992, but judges are required to [consider](#) nonfinancial conditions — such as electronic monitoring, curfews or check-ins — before setting a monetary bond.

Trump's orders are part of his broader crackdown on crime and public safety, which has also included deploying the National Guard to Memphis, Tennessee; Washington, D.C., and Los Angeles.

Same charge, different outcomes

Cash bail is a guarantee to show up to court: A defendant pays money and is allowed to go home. At the end of their case, they may get the money back. A judge or magistrate may set the amount based on the severity of the charge and whether the defendant is considered a flight or safety risk.

But someone unable to pay the bail, even after being charged with a low-level misdemeanor, may remain in jail for days, weeks or months. Defendants by law are presumed innocent, but stuck behind bars, they can lose jobs or housing and be unable to care for their family.

Dozens of jurisdictions, including some states, have taken steps to change their bail systems, but there is no single definition of what constitutes "bail reform" or how such changes are applied.

Some states, counties and cities have moved toward fully or nearly eliminating, cash bail. Under these "cashless bail" systems, people may be released before trial without paying money unless a judge determines they pose a public safety risk or are unlikely to return to court. These decisions, experts say, are made intentionally, based on the facts of the case — including the charges involved — rather than on a defendant's ability to pay.

The policies can affect a large share of the people in the justice system. About 5 million felony cases and 13 million misdemeanor cases are [resolved](#) in state courts each year, according to the National Center for State Courts. Since misdemeanors make up the bulk of cases, state and local bail policies can shape outcomes for millions of people charged with lower-level offenses.

Some opponents of cashless bail policies argue that lenient policies may result in the release of defendants who could reoffend or fail to appear. Supporters counter that keeping people in jail simply because they cannot afford bail is unfair and [disproportionately](#) affects Black, Latino and low-income defendants.

The ongoing debate has fueled misconceptions, partly because some news coverage repeats unproven claims that cashless bail policies cause upticks in crime.

Trump has frequently drawn that connection himself. In a July post on Truth Social, he wrote: "Crime in American Cities started to significantly rise when they went to CASHLESS BAIL. The WORST criminals are flooding our streets and endangering even our great law enforcement officers. It is a complete disaster, and must be ended, IMMEDIATELY!"

Supporters of cash bail often raise concerns that released suspects might commit new, potentially more serious crimes. While that is possible in individual cases, some research suggests that eliminating cash bail does not lead to a widespread increase in crime. Some [research](#) also suggests that setting money bail isn't effective in ensuring court appearances or improving public safety.

How the bail system works

Washington, D.C., the immediate target of Trump's executive orders, largely eliminated the use of cash bail in 1992. Judges are required to first consider nonfinancial conditions, such as check-ins or curfews, though cash bail may still be used in serious cases.

Several states also have adopted major changes. Alaska, California, Illinois, New Jersey and New York have passed laws scaling back or fully eliminating cash bail, though some of those

laws have since been revised. New Mexico voters in 2016 also overwhelmingly approved a [constitutional amendment](#) to eliminate cash bail.

In 2023, Illinois became the first state to fully abolish cash bail through the Pretrial Fairness Act, which also guarantees defendants legal representation at pretrial hearings.

“Those early decisions about someone’s liberty are much more deliberative,” said Don Steman, a professor and co-director of the Center for Criminal Justice at Loyola University Chicago. The center’s team has been [evaluating](#) the implementation and impact of the Pretrial Fairness Act. “It’s about, ‘Is this person a threat to public safety or a threat to willful flight?’”

In Houston, a 2019 settlement and [consent decree](#) resolved a lawsuit challenging Harris County’s misdemeanor bail practices as unconstitutional, requiring the county to release most people charged with misdemeanors on a personal promise to return to court.

In the latest independent monitoring [report](#), from 2024, observers wrote that the changes “have saved Harris County and residents many millions of dollars, improved the lives of tens of thousands of persons,” and resulted in “no increase in new offenses by persons arrested for misdemeanors.”

In August, just a day after Trump issued his executive order, Texas Republican Attorney General Ken Paxton asked a federal court to [vacate](#) the consent decree.

He argued that the order conflicts with a Texas [law](#) passed in 2021 and another state bail [law](#) that took effect this month. Those laws require people charged with violent crimes in Texas to post cash bail in order to be released from jail, and expand the list of offenses for which defendants must post a cash bond, respectively.

[Bail policies and crime](#)

Reports of [violent crime](#) nationwide have been [decreasing](#) since 2022 both in jurisdictions that have adopted cashless bail and in those that have not, though some communities continue to face higher rates of certain offenses, including homicide.

Pretrial crime accounts for only a small share of overall crime. And experts say most crime data is too unreliable to link changes in crime rates to any single policy.

“It’s just so difficult to say this policy equals this result when crime is going up and down so dramatically as it has over the last decade,” said Jeff Clayton, the executive director of the American Bail Coalition, a bail industry lobbying group.

Even so, some research has provided insight.

In Illinois, which eliminated cash bail entirely in 2023, reported crime across the state fell 11% in the first six months after the law took effect compared with the same period a year earlier, according to [data](#) compiled by the Loyola University Chicago’s Center for Criminal Justice. Violent crime dropped 7%, while property crime fell 14%, according to the center’s report.

The declines were seen in both rural counties and in Cook County, though not in every part of the state. Researchers cautioned that the drop in crime cannot be directly tied to the law, but noted in the report that the data shows there was no immediate surge in crime after cash bail ended in the state.

A 2024 [report](#) by the Brennan Center for Justice, a left-leaning law and policy institute at the New York University School of Law, found “no statistically significant relationship” between bail policies and crime rates. The report, which is not peer-reviewed, analyzed data from 33 U.S. cities between 2015 and 2021, 22 of which had made changes to their bail systems.

Similarly, a 2023 peer-reviewed research [paper](#) published in the American Economic Journal found no evidence in a review of cases in Philadelphia that cash bail improves court appearance rates or reduces crime among people released before trial.

The White House pointed to a 2022 [report](#) from the district attorney’s office in Yolo County, California, to support Trump’s claims, the Associated Press [reported](#).

The report examined how a temporary “zero bail” system, put in place statewide during the COVID-19 pandemic to reduce crowding in jails, affected recidivism. It found that out of 595 people released between April 2020 and May 2021, about 71% were arrested again, and more than half were rearrested multiple times.

A follow-up [review](#), released in early 2023, compared recidivism over an 18-month period in Yolo County for two groups: 100 people released on bail in 2018-2019 and 100 people released under the zero bail policy in 2020-2021. The tally found higher rearrest rates among the zero-bail group.

Some experts, however, say those district attorney reports have serious limitations. They compared groups of defendants charged with different types of offenses. And the zero bail releases during COVID-19 were emergency measures to ease jail crowding: People were released without conditions and without any risk assessment, unlike under typical cashless bail systems.

[What comes next](#)

With his executive orders, Trump has taken the unprecedented step of attempting to condition federal funding on how states and cities handle bail.

Some legal experts say the orders are likely to face challenges in court, though it is not yet clear how or when those challenges will arise. It is also unclear which federal grants could be affected, or how the federal justice department will define cashless bail and determine which jurisdictions are covered.

Some legal experts also say the orders raise two major constitutional issues. First, they conflict with principles of federalism, which give states and local governments broad authority to design their own criminal justice systems, as long as they comply with constitutional requirements. Second, they argue the orders may [violate](#) the Tenth Amendment, which says that powers not granted to the federal government are reserved for the states or the people.

Another concern is that the orders may exceed the president's authority by encroaching on Congress's spending power. Only Congress can decide how federal money is spent and attach conditions to that funding, and there is no law currently that allows states to lose federal funds because of their bail policies.

"The president doesn't have the authority to say, 'I'm going to impose that condition because I think that's what the law should be,'" said David Gans, the director of the human rights, civil rights and citizenship program at the Constitutional Accountability Center. "The president is kind of trying to take those decisions away from states."

Editor's note: This story has been updated to reflect state Senate passage of legislation in North Carolina.

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FROM NORTH CAROLINA TO CALIFORNIA: THE CASE AGAINST PRETRIAL RISK ASSESSMENTS

Stephen Frank

Government policies kill. The former Governor of North Carolina, Roy Cooper, promoted the use of cashless bail—and a young lady is dead.

“It is clear that the decisional matrix in the 26th Judicial District is structurally biased against both public safety and ensuring court appearances. For defendants rated as a medium risk — “4” for both the likelihood of fleeing and committing a new crime — the combined probability of failure is 53.35%. Yet, the matrix recommends only “unsecured” bail or “administrative custody of a designated person or organization,” never the posting of bail or preventative detention.

The bias against victims of crime is even more striking. Pretrial risk assessments are presented to the court before victims have an opportunity to speak — a process that, in most states, is constitutionally required.”

The time has come to protect our citizens. The first step would be to end cashless bail. If you have been arrested and convicted 14 times, maybe you need to stay in the Graybar Hotel?

FROM NORTH CAROLINA TO CALIFORNIA:

THE CASE AGAINST PRETRIAL RISK ASSESSMENTS

By Jeffrey J. Clayton, Executive Director, American Bail Coalition, Exclusive to the California Political News and Views, 9/29/25

The tragic murder of Iryna Zarutka has cast a harsh light on the failures of America’s cashless bail policies. On September 29, 2025, the U.S. House Judiciary Committee will convene in Charlotte, North Carolina to examine how these policies embolden repeat offenders like the man who killed her. Against the backdrop of President Trump’s recent Executive Order promising a crackdown on cashless bail, lawmakers must now confront the central role

that pretrial risk assessments play in driving these dangerous release decisions.

Iryna's fate was sealed from the start. The judicial decision matrix used in her case — like so many others — never recommends that hardened defendants be detained, much less required to post bail before release. Instead, this system, fueled by taxpayer dollars, routinely endorses cashless release even for medium-to high-risk defendants who are more likely than not to reoffend or abscond. That reality raises urgent questions: why are we relying on a structurally biased risk assessment framework that undermines public safety, endangers victims and perpetuates racial disparities?

Proponents of ending all pretrial incarceration once hailed pretrial risk assessments as a scientific “magic bullet” for solving the bail problem in the United States. Today, these assessments are used in Los Angeles to inform the bail schedule, influence decision-making across entire states such as Illinois and New Jersey and remain widely employed in hundreds—if not thousands—of local jurisdictions nationwide. Yet numerous academics and civil rights advocates warn that these tools fail to reduce pretrial crime and instead, perpetuate structural racism. The urgent relevance of this debate is clear: just this year, Iryna Zarutska, a 23-year-old Ukrainian refugee, was murdered by a man who had been released from jail without any monetary conditions of bail — a stark reminder of the stakes at play. A decade after their introduction, it is clear that this outdated and discriminatory approach to pretrial risk assessment must be abolished.

Proponents of ending all pretrial incarceration once hailed pretrial risk assessments as a scientific “magic bullet” for solving the bail problem in the United States. Today, these assessments are used in Los Angeles to inform the bail schedule, influence decision-making across entire states such as Illinois and New Jersey and remain widely employed in hundreds — if not thousands — of local jurisdictions nationwide. Yet numerous academics and civil rights advocates warn that these tools fail to reduce pretrial crime and instead, perpetuate structural racism. A decade after their introduction, it is clear that this outdated and discriminatory approach to pretrial risk assessment must be abolished.

Over the past decade, grant funding from organizations such as the Arnold Foundation and MacArthur Foundation encouraged local jurisdictions to fully embrace the risk assessment methodology. “Trust the tool” became the prevailing mantra. For example, on January 23, 2019, the 26th Judicial District in Charlotte, North Carolina, implemented new bail procedures that remain in effect today. These procedures allow for automatic release on zero bail for certain charges, including cyberstalking and carrying a concealed weapon. Beyond these specific cases, the order requires that all judges and magistrates base their decisions on the pretrial risk assessment methodology.

Pretrial risk assessments have been widely criticized for exacerbating structural racism. Even the nation's longest-standing proponent of such tools, the Pretrial Justice Institute, has joined the Leadership Conference on Civil Rights and numerous other academics from around the nation in calling for an end to their use. They did so not because these tools compromise public safety, but because they produce harmful racial disparities. Yet, despite these warnings, the bail directive in the 26th Judicial District continues to cite research from the Pretrial Justice Institute as the scientific foundation for its own pretrial risk assessment methodology.

The biggest problem with pretrial risk assessments is their high error rate, with even the most accurate tools predicting correctly only about 70% of the

time. While the science can roughly identify who might be “risky” and estimate the chance of a failure to appear or reoffend, it completely ignores context. It treats stealing a pack of gum the same as committing a carjacking, and missing a court date at a local bar the same as fleeing to another country. In fact, a simple principle often works better: past behavior remains the most reliable predictor of future behavior.

Moreover, there is no scientific basis for the “decisional matrix” used in conjunction with pretrial risk assessments. This matrix is how pretrial agency staff translate the so-called “science” into a recommendation for judges on whether a defendant should be released and under what conditions. Defendants are scored on two axes: the risk of absconding, from 1 (low) to 6 (high), and the risk of committing a new crime, also from 1 to 6. These scores are plotted on a grid resembling a bingo card and each defendant is placed into a corresponding box.

Pretrial risk assessors across the country, including in the 26th Judicial District, use these matrices to make bail and release recommendations to the court, which is instructed to follow them. However, risk assessments are not scientifically validated for setting bail or determining conditions of release. In fact, the matrix never recommends detention or specifies a bail amount — it always assumes release and only suggests conditions for that release. As a result, it provides judges with no evidence-based guidance on when to detain, when to impose bail, what amount to assign or which conditions might offset rather than merely respond to a risk. The system is structurally biased against both preventative detention and secured monetary bail.

It is clear that the decisional matrix in the 26th Judicial District is structurally biased against both public safety and ensuring court appearances. For defendants rated as a medium risk — “4” for both the likelihood of fleeing and committing a new crime — the combined probability of failure is 53.35%. Yet, the matrix recommends only “unsecured” bail or “administrative custody of a designated person or organization,” never the posting of bail or preventative detention.

The bias against victims of crime is even more striking. Pretrial risk assessments are presented to the court before victims have an opportunity to speak — a process that, in most states, is constitutionally required.

No revalidation or racial bias testing has been conducted on the pretrial risk assessment used in the 26th Judicial District for over a decade. The last study performed, however, revealed that the methodology was a complete failure. Nationally published research from George Mason University professor, Megan Stevenson (*Assessing Risk Assessment in Action*), showed that the Kentucky model of pretrial risk assessments failed to meet its goals and actually increased pretrial crime. The Kentucky risk model resulted in a new crime rate of 10.6% and a new violent crime rate of 1.1% — considered a failure. By comparison, the 26th Judicial District’s assessment had a new crime rate of 34.8% and a new violent crime rate of 9.8%. Despite this hard data, the Charlotte system’s designers in 2014 declared victory, claiming a majority of defendants were “successfully” released without committing a new crime.

It is time to hold the proponents of the continuing use of risk assessments to account, since the designers and builders of the assessments have long since abandoned any sense of responsibility to both the public and to the defendants themselves.

As the U.S. House Judiciary Committee begins its hearings, critical questions about the continued use of pretrial risk assessments must be a primary focus. Chief among them: why are we using taxpayer money to support a structurally racist system that effectively guarantees cashless release for a population that is more likely than not to fail? President Trump's Executive Order, calling for the end of "no cash" bail policies nationwide, signals a push to ensure public safety and hold jurisdictions accountable. It is time to hold the proponents of the continuing use of risk assessments to account, since the designers and builders of the assessments have long since abandoned any sense of responsibility to both the public and to the defendants themselves.

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About Jeffrey J. Clayton, Executive Director of the American Bail Coalition:

Jeffrey J. Clayton is the Executive Director of the American Bail Coalition. He has worked as a public policy and government relations professional, and also as a licensed attorney, serving a variety of clients in legal, legislative, and policy matters. Mr. Clayton also worked in government service, representing the Colorado Judicial Branch and State Labor Department, and the U.S. Department of Transportation. He is also a prior Presidential Management Fellow and Finalist for the U.S. Supreme Court fellows program. Mr. Clayton holds a B.B.A. from Baylor University, an M.S. in Public Policy from the University of Rochester, N.Y., and a J.D. from the Sturm College of Law, University of Denver.